

176816

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

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NOAH M. HICKS II**
M. McMULLEN TAYLOR

2004.357. W/o

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

November 18, 2005

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN VA

VIA HAND-DELIVERY

RECEIVED

NOV 21 2005

PSC SC
MAIL / DMS

The Honorable Barbara A. Scott
Clerk of Court, Richland County
1701 Main Street
Columbia, South Carolina 29201

RE: Carolina Water Service, Inc., Petitioner v. The Public Service Commission of South Carolina and the South Carolina Office of Regulatory Staff, Respondents.

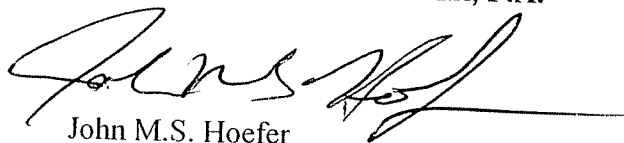
Dear Ms. Scott:

Enclosed for filing on behalf of Petitioner, Carolina Water Service, Inc., are a Notice of Appeal and Summons and Petition for Judicial Review of Orders of the Public Service Commission in the above-referenced matter. Also enclosed are a Cover Sheet for Civil Actions, a Certificate of Exemption From ADR, and a check in the amount of \$150.00 for the filing fee.

I would appreciate your acknowledging receipt of this document by date-stamping the extra copies that are enclosed and returning them to me via our courier delivering same. By copy of this letter, I am serving all parties of record and the agency and enclose a certificate of service to that effect. If you have any questions, or need additional information, please do not hesitate to contact us.

Sincerely,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hoefer

JMSH/twb

Enclosure

cc: The Honorable Charles L.A. Terreni
C. Lessie Hammonds, Esquire
Florence P. Belser, Esquire
Julie F. McIntyre, Esquire
Scott A. Elliott, Esquire
Charles Cook, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Carolina Water Service, Inc.,)

Petitioner,)

v.)

The Public Service Commission of)
South Carolina and the South Carolina)
Office of Regulatory Staff,)

Respondents.)

IN THE COURT OF COMMON PLEAS
C/A No. _____

2005 CP4 006133

CERTIFICATE OF SERVICE

SARAH A. SCOTT
J.C.C. & G.S.

2005 NOV 18 PM 4:00

FILED

This is to certify that I have caused to be served this day one (1) copy of **Notice of Appeal and Summons and Petition for Judicial Review** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator/Hearing Officer
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

RECEIVED

NOV 21 2005

PSC SC
MAIL / DMS

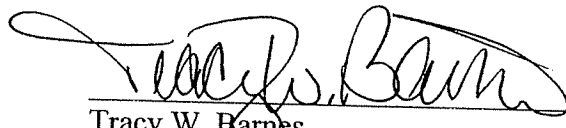
C. Lessie Hammonds, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

Florence P. Belser, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

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DHEC
2600 Bull Street
Columbia, South Carolina 29201

Scott A. Elliott, Esquire
Elliott & Elliott, PA
721 Olive Street
Columbia, South Carolina 29205

Charles Cook, Esquire
Elliott & Elliott, PA
721 Olive Street
Columbia, South Carolina 29205



Tracy W. Barnes

Columbia, South Carolina
This 18th day of November, 2005.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Carolina Water Service, Inc.,)

Plaintiff(s))

vs.)

The Public Service Commission of South Carolina
and the South Carolina Office of Regulatory Staff,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

- CP -

2005 CP 4 00 133

(Please Print)

Submitted By: John M.S. Hoefer

Address: 1022 Calhoun Street, Suite 302

Post Office Box 8416

Columbia, South Carolina 29202

SC Bar #: 2549

Telephone #: 803-252-3300

Fax #: 803-256-8062

Other:

E-mail: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

Administrative Law/Relief

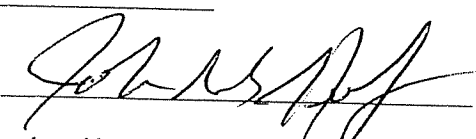
- ☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

Appeals

- ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☒ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600) ☐ Pharmaceuticals (630)
☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640)
☐ Medical (620) ☐ Other (699)

Submitting Party Signature: 

Date: November 18, 2005

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

Carolina Water Service, Inc.,

Plaintiff

vs.

The Public Service Commission of South Carolina
and the South Carolina Office of Regulatory Staff,

Defendant.

IN THE CIRCUIT COURT FOR THE

FIFTH JUDICIAL CIRCUIT

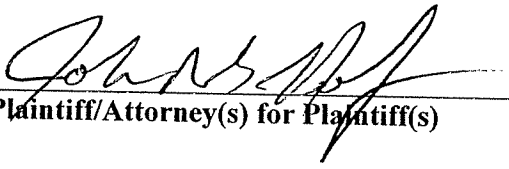
CERTIFICATE OF EXEMPTION
FROM ADR

DOCKET NO. _____

FILED
2005 NOV 18 PM 3:58
CLERK
C.C.C.
& G.S.

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- ☒ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☐ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.



Plaintiff/Attorney(s) for Plaintiff(s)

Defendant/Attorney(s) for Defendant(s)

1022 Calhoun Street, Suite 302
Post Office Box 8416
Columbia, South Carolina 29202

Date: November 18, 2005

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
(Non-Jury)

Carolina Water Service, Inc.,)
Petitioner,)

v.)

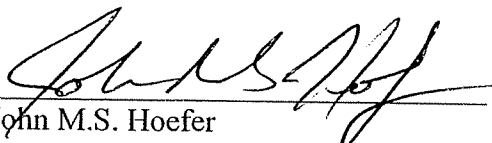
The Public Service Commission of)
South Carolina and the South Carolina)
Office of Regulatory Staff,)
Respondents.)

NOTICE OF APPEAL

FILED
2005 NOV 18 PM 3:59
CAROLINA, SCOTT
C.C.C. G.S.

TO: THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA AND THE
PARTIES OF RECORD IN DOCKET NO. 2004-357-W/S

YOU ARE HEREBY NOTIFIED pursuant to Rule 74 of the South Carolina Rules of
Civil Procedure that Petitioner, Carolina Water Service, Inc. appeals the decisions of the Public
Service Commission of South Carolina in its Docket No. 2004-357-W/S. A copy of the
Summons and Petition for Judicial Review are attached.


John M.S. Hoefer
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
1022 Calhoun Street, Suite 302
Columbia, South Carolina 29202-8416
803-252-3300

Attorneys for Petitioner

Columbia, South Carolina
This 18th day of November, 2005.

RECEIVED
NOV 21 2005
PSC SC
MAIL / DMS

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Carolina Water Service, Inc.,)
)
Petitioner,)
)
v.)
)
The Public Service Commission of)
South Carolina and the South Carolina)
Office of Regulatory Staff,)
)
Respondents.)
_____)

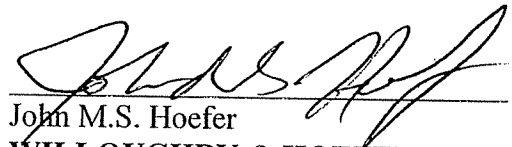
IN THE COURT OF COMMON PLEAS
C/A No. _____
(Non-Jury)

SUMMONS

FILED
2005 NOV 18 PM 3:59
BARBARA A. SCOTT
C.C.C. & G.S.

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said petition upon the subscribers at their offices at 1022 Calhoun Street, Suite 302, Columbia, South Carolina, 29201 (Post Office Box 8416, Columbia, South Carolina 29202-8416) within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the petition within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the petition.


John M.S. Hoefer
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
1022 Calhoun Street, Suite 302
Columbia, South Carolina 29202-8416
803-252-3300

Attorneys for Petitioner

Columbia, South Carolina
This 18th day of November, 2005.

Respondents.

(Appeal of Final Decision of an
Administrative Agency)

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MAIL / DMS
Ann. § 1-23-380

3. The Commission is an administrative agency of the government of the State of South Carolina. Pursuant to S.C. Code Ann. § 58-3-140 (A) (2004), the Commission is charged with the jurisdiction and responsibility to supervise the rates and services of all public utilities operating within the State and to fix just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, or observed, and followed by every public utility in the State. However, the Commission's jurisdiction is subject to certain

just 1

specific exclusions provided elsewhere in Title 58 of the Code of Laws of South Carolina. *See* S.C. Code Ann. § 58-3-140 (E). Pursuant to S.C. Code Ann. § 58-3-60 (A), the Commission's staff may not appear in proceedings before the Commission as a party of record. Accordingly, CWS submits that the Commission is not authorized to participate, through its staff, in proceedings before itself and was not a party below. *Cf.* S.C. Code Ann. § 1-23-380(A)(1). CWS further submits that the Commission is therefore not a proper party respondent in the instant case and is informed and believes that the Commission has advised this Court in other similar actions that it does not consider itself to be a party of record. However, in order to protect itself from a finding that this court lacks jurisdiction¹ in the instant matter, CWS names the Commission as a respondent.

4. The Office of Regulatory Staff ("ORS") is an agency of the State which is authorized to participate as a party of record in all filings, applications, or proceedings before the Commission and participated as a party of record in the proceeding below subject of the within petition.

5. On or about December 17, 2004, CWS filed an application with the Commission pursuant to S.C. Code Ann. 58-5-240 (Supp. 2003) seeking approval of a new schedule of rates and charges for the water and sewer services provided within its certificated service area. The matter was assigned Commission Docket No. 2004-357-WS.

6. On or about June 22, 2005, the Commission issued Order No. 2005-328 in the above-referenced docket ruling upon CWS's request for rate relief. A copy of Order No. 2005-328 is attached hereto as Exhibit "A." CWS received Order No. 2005-328 via certified mail on June 24, 2005.

¹See S.C. Code Ann. § 58-5-340 (1976) (providing that "the applicant may commence an action in the court of common pleas for Richland County **against** the Commission").

7. On or about July 14, 2005, CWS submitted to the Commission a Petition for Rehearing or Reconsideration of Order No. 2005-328, pursuant to S.C. Code Ann. § 58-5-330 (1976) and 26 S.C. Code Ann. Regs. R. 103-881 (Supp. 2004), which requested reconsideration or rehearing of the findings and conclusions on certain issues set forth therein. A copy of CWS's Petition for Rehearing or Reconsideration is attached hereto and incorporated herein by this reference as Exhibit "B."

8. On or about October 17, 2005, with service being made upon CWS on October 20, 2005, the Commission issued Order No. 2005-465 in Docket No. 2004-357-WS, denying CWS's Petition for Rehearing or Reconsideration. A copy of Order No. 2005-465 is attached hereto as Exhibit "C."

9. CWS has exhausted all administrative remedies available and asserts that the Commission Orders referenced above have prejudiced its substantial rights for the reasons set forth herein and in Exhibit "B." CWS is an aggrieved party by virtue of the final decision of the Commission in this contested case and is entitled as a matter of legal right to judicial review and reversal of the Commission's decision.

10. CWS asserts that the Commission's orders are erroneous as a matter of law, against the substantial evidence of record, arbitrary and capricious, characterized by abuse of discretion, in violation of constitutional or statutory provisions, made upon unlawful procedure, or affected by other errors of law, as more fully addressed below:

- (a) The Commission erroneously concluded that an appropriate return on equity for CWS was 9.10% in that it (i) arrived at that determination utilizing a range of returns on equity that was not testified to by any witness in the case, (ii) imposed an artificial 1% limitation on the range of returns on equity from which it would select an allowable return and did so without notice to CWS that it would so

restrict its consideration of allowable returns on equity, (iii) arrived at an allowable return for the express purpose of favoring the interests of the customers over the interests of CWS contrary to the requirements of law and (iv) relied upon expert opinion testimony that was based upon an exercise of judgment which lacked a substantial evidentiary basis. The approved return on equity is therefore unreasonable and generates an inadequate rate of return on rate base. The resulting rates approved by the Commission are thus inadequate and therefore not just and reasonable as required by law.

- (b) The Commission erroneously included an accounting adjustment for customer growth that was not proposed by any party in the case, is not supported by substantial evidence of record, and requires CWS to recognize projected revenues for ratemaking purposes without recognizing the concomitant expenses for ratemaking purposes. This is not only impermissibly contrary to the prior practice of the Commission, it is inconsistent with the requirement of law that expenses be adjusted for known and measurable events. The resulting rates approved by the Commission are thus inadequate and therefore not just and reasonable as required by law.
- (c) The Commission erroneously imposed on CWS service and reporting requirements and standards that are (i) contrary to or in excess of those to which CWS is subject under 26 S.C. Code Ann. Regs. RR. 103-500, *et seq.* (1976, as amended) and 103-700 *et seq.* (1976, as amended), (ii) unsupported by substantial evidence of record and (iii) not within the authority of the Commission to impose.
- (d) The Commission erroneously directed the ORS to commence water quality testing and establish standards with respect to CWS's service when (i) the Commission

lacks legal authority to require ORS to perform such testing or establish such standards, (ii) ORS lacks legal authority to conduct such testing or establish such standards and (iii) no substantial evidence of record supporting a need for water quality testing by ORS existed.

- (e) The Commission erroneously interpreted 26 S.C. Code Ann. Regs. RR. 103-513(C) and 103-713(C) (Supp. 2004) to require CWS to file with the Commission every notice of violation received by CWS from the South Carolina Department of Environmental Control when (i) such interpretation contravenes the plain meaning of these regulations, (ii) such interpretation and application departs from the Commission's prior interpretation and application of the regulations without an adequate basis in law or fact, (iii) no substantial evidence of record supports the Commission's orders in this regard, (iv) such interpretation and application of these regulations denies CWS due process², and (v) such interpretation and application of these regulations violate the provisions of law respecting the promulgation and enforcement of regulations.
- (f) The Commission erroneously interpreted 26 S.C. Code Ann. Regs. RR. 103-500(B) and 103-700(B) (1976) as permitting it to alter, amend or revoke, in whole or in part, the rules and regulations of the Commission on an *ad hoc*, case by case basis without observing the requirements of law pertaining to the promulgation of rules and regulations by an administrative agency.

²It is unclear to CWS whether the Commission has, by its order denying reconsideration or rehearing, limited the scope of its earlier ruling regarding the reporting of DHEC notices of violation only to those resulting in a determination that a violation occurred. *Cf.* Order No. 2005-465 at 21 ("the problem being addressed . . . in this part of the Order was the lack of information available from the Company on DHEC violations"); *accord, Id.* ("[t]he only thing that this Commission ordered the Company to do was to report all DHEC violations and not corrective actions taken").

WHEREFORE, having set forth its grounds for judicial review, CWS respectfully requests that this Court review the Commission's orders and issue an order of this Court:

(a) Reversing Commission Orders No. 2005-328 and 2005-465 in Docket No. 2005-357-WS for the reasons set forth above and in Exhibit "B" hereto;

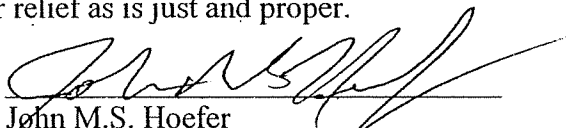
(b) Remanding this matter to the Commission with instructions to issue an order approving rates and charges which (i) will permit CWS an opportunity to earn a return on rate base calculated using a return on equity supported by the substantial evidence of record and not designed to result in rates which favor customers over the utility and (ii) reflect no customer growth adjustment or a customer growth adjustment that takes into account projected increases in revenues and expenses resulting from customer growth;

(c) Relieving CWS from compliance with the standards and requirements unlawfully imposed by the Commission's orders;

(d) Precluding ORS from conducting the water quality testing ordered by the Commission;

(e) Declaring that the Commission may only alter, modify or revoke its rules and regulations in accordance with the provisions of law pertaining to agency rulemaking; and

(f) Granting CWS such other and further relief as is just and proper.


John M.S. Hoefer
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
1022 Calhoun Street, Suite 302
Columbia, South Carolina 29202-8416
803-252-3300

Attorneys for Petitioner

Columbia, South Carolina
This 18th day of November, 2005.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2004-357-W/S - ORDER NO. 2005-328

JUNE 22, 2005

IN RE: Application of Carolina Water Service, Inc. for Adjustment of Rates and Charges and Modification of Certain Terms and Conditions for the Provision of Water and Sewer Service))))))	ORDER APPROVING RATES AND CHARGES
--	----------------------------	--------------------------------------

I. INTRODUCTION

This matter is before the Public Service Commission of South Carolina ("Commission") on the Application of Carolina Water Service, Inc. ("CWS" or "Company") for approval of a new schedule of rates and charges and modifications to certain terms and conditions for the provision of water and sewer services for its customers in South Carolina. CWS filed its Application on December 17, 2004, pursuant to S.C. Code Ann. § 58-5-240 (Supp. 2003) and 26 S.C. Code Ann. Regs. RR. 103-503 (1976), 103-703 (1976), 103-512.4.A (Supp. 2003) and 103-712.4.A (1976, as amended).

By correspondence, the Commission's Docketing Department instructed CWS to publish a prepared Notice of Filing, one time, in a newspaper of general circulation in the area affected by CWS's Application and to mail copies of the Notice of Filing to all customers affected by the proposed rates and charges and modifications. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the scheduled proceeding of the manner and time in which to file the

appropriate pleadings. CWS filed affidavits showing that it had complied with the Docketing Department's instructions.

Petitions to Intervene were subsequently filed on behalf of the South Carolina Department of Health and Environmental Control ("DHEC") and Midlands Utilities, Inc. ("Midlands"). The Commission received letters of protest from fifty-four (54) CWS customers. The South Carolina Office of Regulatory Staff ("ORS"), a party of record pursuant to S.C. Code Ann. § 58-4-10(B) (Supp. 2004), made on-site investigations of CWS' facilities, audited CWS' books and records, issued data requests, and gathered other detailed information concerning CWS' operations.

The Commission held four (4) separate public hearings in Dorchester, York and Lexington counties for the purpose of allowing CWS' customers to present their views regarding the Application.¹ A total of forty-nine (49) customers testified at these hearings.² Thereafter, on May 4, 2005, at 10:30 a.m., an evidentiary hearing was convened before the Commission in its offices in Columbia with the Honorable Randy Mitchell presiding. CWS was represented at the hearing by John M.S. Hoefer, Esquire. Charles H. Cook, Esquire, represented Midlands. Jessica J.O. King, Esquire represented DHEC. Florence P. Belser, Esquire, and Lessie C. Hammonds, Esquire, represented the ORS. Prior to the presentation of the cases of the parties of record, the Commission permitted nine (9) customers to testify, eight (8) of whom had not spoken at any of the

¹ These hearings were held April 18, 2005 in Summerville, April 20, 2005 in Irmo, April 26, 2005 in the Lake Wylie area of York County, and May 2, 2005 in the Oak Grove area of Lexington County. Pursuant to directions of the Commission's Docketing Department, notice of these hearings was given to affected customers by the Company as reflected in an affidavit filed by the Company.

² A total of 229 customers attended these hearings. It is reasonable to assume that more customers would have spoken but for the lateness of the hour and the desire to refrain from duplicative testimony.

previous public hearings. Fifteen (15) customers attended the May 4, 2005, hearing. CWS presented the direct and rebuttal testimony of three (3) witnesses: Bruce T. Haas, CWS Regional Director of Operations; Steven M. Lubertozi, CWS Director of Regulatory Accounting; and Pauline M. Ahern, CRRA, Vice-President of AUS Consultants – Utility Services. Midlands presented the direct and surrebuttal testimony of Keith G. Parnell. No testimony was presented by DHEC, although it made an offer of proof by way of a proffer of the pre-filed direct testimony of Jeffrey P. DeBessonnet, P.E.³ ORS presented the direct testimony of Willie J. Morgan, P.E., the Program Manager for its Water and Wastewater Department; Dawn M. Hipp, a Program Specialist in the ORS Water and Wastewater Department; and Sharon G. Scott, Auditor for ORS. Also, ORS presented the direct and surrebuttal testimony of Ben Johnson, PhD. of Ben Johnson Associates, Inc. The evidentiary hearing was completed on May 5, 2005.

In considering the Application of CWS, the Commission must consider competing interests to arrive at just and reasonable rates. These competing interests are those of the ratepayer and those of the utility, which has the right to earn a fair return. *S.C. Cable Television Ass'n v. Public Serv. Comm'n*, 313 S.C. 48, 437 S.E.2d 38 (1993). In so doing, we may consider the quality of the utility's service, which is determined by reference to its adequacy. *Patton v. S.C. Public Serv. Comm'n*, 280 S.C. 288, 312 S.E.2d 257 (1984). Regulation, as it has developed in the United States, is concerned with rates,

³ On April 25, 2005, CWS filed and served a motion seeking an order of the Commission prohibiting DHEC from introducing Mr. deBessonnet's prefiled testimony into evidence or making it part of the record in this case. By order of its duly appointed Hearing Officer, Charles L.A. Terreni, dated April 28, 2005, the Commission granted CWS's motion to the extent that it sought to preclude the reception of Mr. deBessonnet's testimony as evidence. However, Mr. Terreni's order permitted an offer of proof by DHEC. At hearing, CWS made a conditional offer of proof by way of a proffer of the rebuttal testimony pre-filed by Mr. Lubertozi in response to Mr. deBessonnet's testimony.

service, [and] safety. Charles F. Phillips, Jr., *The Regulation of Public Utilities*, (1993) at 171. Rate regulation has two aspects: control of the rate level (earnings) and control of the rate structure (prices). *Id.* As to the rate level, public utilities are entitled to cover all allowable operating costs and to have the opportunity to earn a “fair” rate of return. *Id.* Collectively, these items comprise a company’s total revenue requirements. *Id.* As to the rate structure, public utilities are permitted to establish rates that, at a minimum, will cover their revenue requirements. *Id.* at 171-72. Such rates must be “just and reasonable,” with no “undue” discrimination. *Id.* at 172.

Thus, in considering the Application of CWS, the Commission must give due consideration to the Company’s total revenue requirements, comprised of allowable operating costs and the opportunity to earn a fair rate of return. To this end, the Commission will review the operating revenues and operating expenses of CWS and will endeavor to establish adequate and reasonable levels of revenues and expenses. Further, the Commission will consider a fair rate of return for CWS based upon the record before it. Should the Commission’s determination show that rates should be increased, the Commission will then design rates that will meet the revenue requirements of CWS but that are also just and reasonable and free of undue discrimination.

II. PRELIMINARY MATTERS

A. THE CWS MOTION TO STRIKE

By written motion and supporting memorandum dated April 26, 2005, CWS moved the Commission for an order striking statements of certain customers made at hearings in this docket complaining of sewer backups. The Commission heard argument

on the motion by CWS prior to the start of its case in chief. [Tr. p. 86, l. 18 – p. 94, l. 13; Tr. p. 97, l. 5 – p. 106, l. 20.] None of the other parties of record opposed the Company's motion. [Tr. p. 94, ll. 14 – 16; p. 129, l. 16 – p. 130, l. 23.] The Commission reserved ruling on this motion and advised the parties that it would address it in its final order in this matter. [Tr. p. 130, l. 24 – p. 131, l. 3.]

CWS argues that the Commission lacks jurisdiction to consider such complaints in a rate setting proceeding brought pursuant to S.C. Code Ann. § 58-5-240. CWS takes the position that such complaints can only be heard in a complaint proceeding brought pursuant to S.C. Code Ann. § 58-5-270. CWS alleges that complaints regarding sewer backups are not an issue in the instant proceeding and consideration of consumer statements pertaining to same would constitute reversible error. CWS further states that consideration of such complaints as evidence in the present case denies CWS due process, and that the Commission lacks jurisdiction to address complaints alleging damages arising from acts or matters alleged to have been done or failed to have been done by the Applicant in the conduct of its business. For the following reasons, CWS' motion is denied.

This Commission lacks jurisdiction to award damages to customers as the result of the action or inaction of the Company. However, S.C. Code Ann. § 58-5-240(B) requires this Commission to “hold a public hearing concerning the lawfulness or reasonableness of the proposed changes [in rates]”. Evidence pertaining to the company's quality of service, and specifically of sewer backups, is properly considered in light of this mandate.

The public testimony regarding sewer backup, though anecdotal, is relevant to our general review of customer service and the quality of service as provided by the Company. Also, the challenged testimony, and the greater body of customer testimony, is relevant to how the Company handles complaints. We would note that Commission Regulations 26 S.C. Code Ann. Regs. 103-516 and 103-716 (Supp. 2004) specifically address wastewater and water complaints, respectively. Customer complaints are of great concern to this Commission. In this Order, we are instituting certain measures that the Company must take to deal with the customer complaints and quality of service issues.

Furthermore, all parties were given the opportunity to cross examine the night hearing witnesses under oath, and were also allowed to present testimony rebutting their allegations. The Company filed rebuttal testimony responding to the specific episodes recounted by several public witnesses.⁴ In fact, we would note that Company witness Haas addressed these precise issues in testimony during the hearing in this case. [Tr., pp. 367-369.] We do not believe that the consideration of the evidence in the manner described denies the Company's due process rights. Accordingly, the Motion to Strike is denied.

B. THE STIPULATION BETWEEN CWS AND MIDLANDS

At the hearing, the Company and Midlands submitted a written stipulation and agreement that \$15 per single family equivalent is a reasonable monthly bulk sewer

⁴ CWS witness Haas testified, among other things that CWS has a policy of systematically cleaning its sewer lines in order to minimize backups and ruptures caused through intrusion by roots and other obstructions or breakage. Haas did not know if there were any industry standards for maintaining sewerage lines, and no other witness testified to the existence of such standards during the hearing. Tr. p. 357. Given CWS' avowed desire to minimize disruptions in its service, the Commission recommends that CWS determine whether such standards exist, and whether its maintenance program meets them.

service rate to be charged by CWS for treatment it provides for wastewater flow from Midlands' Vanarsdale subdivision service area. . [Tr. p. 71, l. 10 – p. 74, l. 17; Hearing Exhibit No. 7.] Currently, CWS treats 416 single family equivalents for Midlands. [Parnell Pre-filed Direct testimony, p. 2, ll. 20-21.] The current monthly rate of \$11 per single family equivalent was approved by this Commission in Docket No. 95-1151-S. ORS stated that it accepted the stipulation and agreement as being in the public interest. [Tr. P. 74, l. 23 – p. 75, l. 6.] DHEC did not take a position on the matter. [Tr. p. 74, ll. 18-19.]

We find that the stipulated rate is reasonable and therefore accept the stipulation and agreement. Under the stipulated rate, Midlands will experience an increase of approximately 36% in bulk treatment charges [Tr. p. 72, ll. 13-21], which is generally consistent with the amount of increase sought for the Company's other sewer customers (both treatment and collection only customers). [Lubertoizzi Pre-filed Direct testimony, Tr. p. 290, l. 26 - p.291, l. 3.] Moreover, this rate is also only 23¢ more per month than a rate proposed by Midlands. [Parnell Pre-filed Direct testimony, p. 4, l. 11.] And, the rate established in Docket No. 95-1151-S has been in effect since 1996. [Parnell Pre-filed Direct testimony, p. 2, ll. 19-20.] The Company has since that time received approval for an increase in the rates of other customers from which Midlands was excepted. See Order No. 2001-887, August 27, 2001, Docket No. 2000-207-W/S. We find that acceptance of the stipulation is in the public interest because it reflects a resolution of a disputed issue in a matter within the jurisdiction of the Commission. *Cf.* S.C. Code Ann. § 58-4-50 (A)(9). And, as noted above, there has been no objection by the other parties

of record to this stipulation. Accordingly, in giving effect to the stipulation and agreement, consistent with our revenue findings herein, the Commission will include \$76,005 for bulk treatment services provided by the Company to Midlands in determining the total revenues in this proceeding.

III. FINDINGS OF FACT AND SUPPORTING EVIDENCE

1. CWS provides water service to approximately 5,800 customers and sewer service to approximately 10,000 customers in portions of Aiken, Beaufort, Charleston, Dorchester, Georgetown, Lexington, Orangeburg, Richland, Sumter, Williamsburg and York counties. As a public utility, its operations are subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. §§ 58-5-10 *et seq.* (1976 & Supp. 2004).

The evidence supporting this finding is contained in the Company's application, the testimony of its witnesses Haas [Haas Pre-filed Direct testimony, Tr. p.322, ll. 18-20] and Lubertozi [Lubertozi Pre-filed Direct testimony, Tr. p. 288, ll. 12-17] and in the testimony of ORS witness Hipp [Hipp Pre-filed Direct testimony, Tr. p. 415 ll. 8-21.]

2. The appropriate test year for purposes of this proceeding is the twelve month period ending June 30, 2004.

The evidence supporting this finding is contained in the Company's application, the testimony of its witness Lubertozi [Lubertozi Pre-filed Direct testimony, Tr. p. 289, ll. 5-7], and the ORS Audit Department Report sponsored by ORS witness Scott [Scott Pre-filed Revised Direct testimony, Tr. p. 434, ll. 4-10 and 18; Hearing Exhibit No. 19 at 2, ¶ 3], which reflects that CWS proposed a test year ending June 30, 2004 and that ORS

accepted that as an appropriate test year. No other party objected to the proposed test year.

A fundamental principle of the ratemaking process is the establishment of a test year period. In *Heater of Seabrook v. Public Service Commission of South Carolina*, 324 S.C. 56, 478 S.E.2d 826 (1996), the Supreme Court observed that “[t]he ‘test year’ concept is very important in the rate-setting process. In order to determine what a utility’s expenses and revenues are for purposes of determining the reasonableness of a rate, one must select a ‘test year’ for the measurement of the expenses and revenues.” *Id.*, 478 S.E.2d 828, n. 1. The test year is established to provide a basis for making the most accurate forecast of the utility’s rate base, reserves, and expenses in the near future when the prescribed rates are in effect. *Porter v. South Carolina Pub. Serv. Comm’n*, 328 S.C. 222, 493 S.E.2d 92 (1997). The historical test year may be used as long as adjustments are made for any known and measurable out-of-period changes in expenses, revenues, and investments. *Id.* Accordingly, the Commission adopts the test year proposed by the Company and will make adjustments for any known and measurable changes outside the test year.

3. The Commission will use rate of return on rate base as a guide in determining just and reasonable rates.

The evidence supporting this finding is contained in the Company’s application and the testimony of its witness Lubertozzi. [Lubertozzi Direct Pre-filed testimony, Tr. p. 296, l. 25 – p. 297, l. 5.] Additionally, no other party of record proposed an alternative method for determining just and reasonable rates and the testimony of ORS’ witnesses

Scott and Johnson contemplate that return on rate base will be the methodology employed.

The Commission has wide latitude in selecting an appropriate rate-setting methodology. *Heater of Seabrook, supra*, 478 S.E.2d at 830. Even though S.C. Code Ann. § 58-5-240(H) (Supp. 2004) requires the Commission to specify an operating margin in all water and sewer cases, the Commission is not precluded by that statute from employing the return on rate base approach to ratemaking. *Id.* Operating margin “is less appropriate for utilities that have large rate bases and need to earn a rate of return sufficient to obtain the necessary debt and equity capital that a large utility needs for sound operation.” *Id.* In the Company’s last rate case, we employed the return on rate base methodology. The Company’s unadjusted rate base, according to its application, is \$15,639,930. Given the foregoing, and the uncontradicted testimony that the Company has a need to earn a fair and reasonable return on its investment, the Commission finds that the return on rate base methodology is the appropriate methodology to use in this case.

4. The determination of return on rate base requires consideration of three components, namely: capital structure, cost of equity (or return on equity) and the cost of debt.

The evidence supporting this finding is contained in the testimony of the Company’s and ORS’ expert witnesses on cost of capital. [Ahern Pre-filed Direct testimony, Tr. p. 136, ll. 3-9; Johnson Direct Pre-filed testimony, Tr. p. 228, l. 19 - p. 229, l. 9.]

5. In determining the Company's appropriate return on rate base, the correct capital structure and cost of debt is that of CWS' parent, Utilities, Inc., at December 31, 2003. Accordingly, for purposes of this proceeding, the correct capital structure is 59.23% (debt) and 40.77% (common equity) and the correct embedded cost of debt is 7.28%.

The evidence supporting this finding is contained in the testimonies of Company witness Ahern [Ahern Direct Pre-filed testimony, Tr. p. 136, ll. 5-8] and ORS witnesses Scott [Scott Revised Direct Pre-filed testimony, Tr. p. 434, ll. 6-10, Hearing Exhibit No. 19, pp. 4-5 and p. 22 and Johnson [Johnson Direct Pre-filed testimony, Tr. p. 228, l. 19 - p. 229, l. 17.] Use of the cost of debt of Utilities, Inc., verified by the ORS audit staff, is appropriate as CWS obtains all of its external financing from its parent, which determines how much income CWS can retain. This approach is also consistent with the analysis we employed in the Company's last rate case. [Id.]

6. A fair range of return on equity for CWS is 9.1% – 10.1%

The evidence supporting this finding is contained in the testimonies of Company witness Ahern and ORS witness Johnson. As noted by witness Ahern, under the standards enunciated in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) and *Bluefield Water Works Improvement Co. v. Public Service Comm'n*, 262 U.S. 679 (1922), a utility is entitled to an opportunity to earn a fair rate of return. [Ahern Direct Pre-filed testimony, Tr. p. 138, ll. 1- 4.] The rate of return on common equity is a key figure used in calculating a utility's overall rate of return. *Porter v. South Carolina Public Service Commission*, 333 S.C. 12, 507 S.E.2d 328 (1998).

To determine the cost of equity, both Company witness Ahern and ORS witness Johnson employed the Comparable Earnings Model (“CEM”)⁴ and Discounted Cash Flow (“DCF”).⁵ In addition, Ahern also utilized the Capital Asset Pricing Model (“CAPM”) and the Risk Premium Model (“RPM”). Both DCF and CAPM are market-based approaches relying upon transactions in the securities markets and estimates of investor expectations. Charles F. Phillips, Jr., *The Regulation of Public Utilities* (1993) at 394.

Ahern assessed the market-based cost rates of similar risk companies, i.e. proxy groups, for insight into a recommended common equity cost rate for CWS. [Ahern Pre-filed Direct testimony, Tr. p. 140, ll. 5-6.] The proxy groups were used by Ahern because the Company’s common stock is not publicly traded, and, therefore, CWS’s market-based common equity cost rates cannot be determined directly. [Ahern Pre-filed Direct testimony, Tr. p. 137, l. 26 - p. 138, l. 10; p. 143, l. 15 - p. 145, l. 12.] Therefore, Ahern used two proxy groups of water companies whose common stocks were actively traded for insight into an appropriate common equity cost rate applicable to CWS. [Id.] The two proxy groups consist of six and three water companies, respectively. [Ahern Pre-filed Direct testimony, Tr. p. 144, Table 3.] Ahern selected the proxy group of six AUS Utility Reports water companies because (1) they were included in the Water Company Group of AUS Utility Reports (March 2005), (2) they have Value Line or Thomson FN/First Call Consensus projected growth rates in earnings per share, and (3) they have

⁴Johnson used the term “Comparable Earning Analysis” when referring to the CEM approach. For ease of reference, the Commission will refer to his “Comparable Earning Analysis” as CEA.

⁵Johnson used the term “market approach” when referring to his analysis which included DCF. For ease of reference, the Commission will refer to his “market approach” as DCF.

more than 70% of their 2003 operating revenues derived from water and sewer operations. [Ahern Pre-filed Direct testimony, Tr. p. 148, ll. 2-9.] The three Value Line water companies were chosen because they are included in the Water Utility Group of Value Line (Standard Edition) Water Utility Industry Group. [Ahern Pre-filed Direct testimony, Tr. p. 149, ll. 5-10.]

Ahern's DCF analysis yields cost rates for the proxy group of six AUS Utility Reports companies of 10.60% and for the proxy group of three Value Line water companies of 10.80%. [Ahern Pre-filed Direct testimony, Tr. p. 165, ll. 5-10.] The results of the RPM analysis produced common equity cost rates of 10.60% for the six AUS Utility Reports water companies and 10.80% for the proxy group of three Value Line water companies. [Ahern Pre-filed Direct testimony, Tr. p. 174, ll. 16-20.] The CEM produces common equity cost rate results of 14.50% for the proxy group of six AUS Utility Report water companies and 14.40% for the proxy group of three Value Line water companies. [Ahern Pre-filed Direct testimony, Tr. p. 189, ll. 9-11.] Finally, the traditional CAPM cost rate is 9.90% for the proxy group of six AUS Utility Reports water companies and 10.20% for the three Value Line water companies. The empirical CAPM cost rate is 10.40% for the proxy group of six AUS Utility Reports water companies and 10.60% for the proxy group of three Value Line water companies. The CAPM cost rate for the proxy group of six AUS Utility Reports water companies is 10.20% and for the three Value Line water companies is 10.40% based upon the traditional and empirical CAPM results. [Ahern Pre-filed Direct testimony, Tr. p. 180, l. 20 – p. 181, l. 6.] The average cost of common equity for the proxy group of six AUS

Utility Reports water companies is 10.9% and the average for the proxy group of three Value Line water companies is 11.0%.

Witness Ahern reviewed the results of the application of the four different cost of common equity models and then adjusted them upward to reflect CWS's greater risk compared to the proxy groups by adding an investment risk adjustment of .50% (50 basis points) to the average cost of equity of both proxy groups. This yielded Ahern's recommended range of common equity cost rates of 11.40% for the proxy group of six AUS Utility Reports water companies and 11.50% for the proxy group of three Value Line water companies. [Ahern Pre-filed Direct testimony, Tr. p. 137, ll. 1-26; p. 189, ll. 14-19.] In Ahern's opinion, the investment risk adjustment is necessary because CWS is a more risky investment than the average proxy group company due to CWS's small size compared to the two proxy groups, whether measured by book capitalization or the market capitalization of common equity. [Ahern Direct Pre-filed testimony, Tr. p. 191, l. 32 - p. 192, l. 4.] Ahern asserted that the loss of revenue from a few larger customers would have a greater effect on a small company than on a much larger company with a larger customer base. [Ahern Pre-filed Direct testimony, Tr. p. 143, l. 24 - p.144, l. 2.] Ahern then opined that, based upon the slightly greater financial risk of CWS *vis-a-vis* the nine proxy group companies [Ahern Direct Pre-filed Direct testimony, Tr. p. 147, ll. 10-16], CWS should be authorized a return on common equity at the higher end of her range, which is 11.50%. [Ahern Pre-filed Direct testimony, Tr. p. 193, ll. 19-20.]

Dr. Johnson's Comparable Earnings Analysis (CEA) is his equivalent of witness Ahern's Comparable Earnings Model (CEM). Dr. Johnson based his CEA on the earnings

on common equity of two broad and comprehensive groups: the Federal Trade Commission's "All Manufacturers" group and the group of approximately 900 companies monitored quarterly by Business Week. Using return-on-equity data from 1975 to 2004, Dr. Johnson calculated moving average returns for the five-year, ten-year, fifteen-year, twenty-year, and thirty-year periods for the Federal Trade Commission group and the Business Week group. [Johnson Pre-filed Direct testimony, Tr. p. 236, ll. 3-19.] Dr. Johnson concluded that the average current and near-future opportunity cost of equity capital for an unregulated firm is in the range of 11.5% to 13.0%. [Johnson Pre-filed Direct testimony, Tr. p. 238, ll. 3-6.] In the opinion of Dr. Johnson, the equity risk of the average regulated utility is far lower than the equity risk of the average unregulated firm, and the equity risk of water utilities is less than that of other utilities. [Johnson Pre-filed Direct testimony, Tr. p.238, ll. 20-23, p. 239, ll. 11-12.] Factoring in differences in overall equity risk separating unregulated industrial companies and regulated utilities, Johnson's CEA suggests a cost of equity of 10.0% to 11.5% for telephone utilities, electric utilities, and gas utilities and a cost of equity of 9.5% to 10.5% for water utilities. [Johnson Pre-filed Direct testimony, Tr. p. 242, ll. 11-23.]

Dr. Johnson's market DCF analysis used data for ten water companies for which Standard and Poor's stock reports were available. A proxy group was necessary because CWS does not issue common stock and its parent, Utilities, Inc., is not publicly traded. [Johnson Pre-filed Direct testimony, Tr. p. 244, ll. 8-10.] Based on his analyses of dividend yields and growth rates in dividends, earnings, and book values for the proxy group, Dr. Johnson concluded that investors in the proxy group companies require on

average a return on equity of approximately 8.5% to 9.8%. [Johnson Pre-filed Direct testimony, Tr. p.248, ll. 17-19.] Dr. Johnson added 0.4% to cover the cost of issuing stock and 0.6% to account for the relatively small size of CWS' service territory in South Carolina. After making these adjustments, Dr. Johnson concludes that his DCF analysis suggests a cost of equity of 9.5% to 10.8% as appropriate for CWS. [Johnson Pre-filed Direct testimony, Tr. p. 253, ll. 10 - p. 254, l. 1.]

For a number of reasons which will be discussed further, the Commission accepts the conclusions of ORS witness Dr. Johnson, with the exception of his 0.4% stock issuance adjustment. As noted above, Dr. Johnson states that CWS does not issue stock and its parent, Utilities, Inc., is not publicly traded. Therefore, no issuance of CWS has occurred in the recent past or will occur in the near future. Witness Ahern did not include a stock issuance adjustment stating that such an adjustment is only appropriate when a company is going to be issuing stock in the near term or has recently issued stock and needs to recover the cost of the issuance. CWS has not issued stock, nor does it plan to do so. [Tr. p. 217, l. 15 - p. 218, l. 2.] With no issuance of stock by CWS, no issuance adjustment is necessary. Thus, the 0.4% stock issuance adjustment of Dr. Johnson is not appropriate and should be removed from his recommended range of return on equity. Correcting for this inappropriate stock issuance adjustment results in a return-on-equity range of 9.1% to 10.7%.

Witness Ahern faults Dr. Johnson for relying exclusively on historical data for his CEA and DCF analyses. [Ahern Rebuttal testimony, Tr. p. 196, ll. 2-9.] Dr. Johnson states that the growth rate of 5.5% to 6.5% used in his analysis reflects the average

investor's long-run expectations for long-term dividend growth, not just the next few years. Value Line growth projections as used by witness Ahern represent what Value Line anticipates will occur in the next few years. [Johnson Surrebuttal testimony, Tr. p. 259, l. 22 - p. 261, l. 15., p. 262. ll. 1-14.]

Another criticism of Dr. Johnson's CEA analysis by witness Ahern is that his downward adjustment to the return on equity of unregulated industrial companies to reflect the lower equity risk of regulated companies lacks support. Dr. Johnson provides reasons for his risk adjustment. It is his belief that there is no data set that can directly measure the risk differential between regulated and unregulated companies. Therefore, Dr. Johnson relies on his judgment as to the appropriate magnitude of the risk adjustment. [Examination by Commissioner Howard, Tr. p.278, l. 15 - p. 281, l. 23.]

The Commission is of the opinion that the analyses and the resulting recommended return on equity of Company witness Pauline Ahern may overstate the appropriate return on equity for CWS. Witness Ahern eliminates all DCF results that are no more than 200 basis points above the current prospective average yield on A-rated public utility bonds. As a result, any return on equity below 8.6% is discarded. [Ahern Direct testimony, Tr. p. 165, l. 10 - p. 166, l. 7.] Ahern apparently assumes that investors expect the long-term yield on A-rated public utility bonds to be 6.6% and require a 200 basis point premium for return on equity.⁶ Also, based on Audit Exhibit SGS-1 Revised, the actual per books return on equity earned by CWS during the test year was 3.4%, well

⁶ The Commission notes that witness Ahern placed no such floor on her DCF analysis in her testimony in CWS Docket No. 2000-207-WS. Based on her testimony in Docket No. 2000-207-WS, a minimum DCF return on equity requirement of 200 basis points above the A-rated public utility bond yield would result in elimination of any return on equity below 9.9%. It appears that investors have reduced their expectations on the long-term yield of A-rated public utility bonds since the previous CWS rate case in 2001.

below the 8.6% minimum set by witness Ahern. [Audit Exhibit SGS-1, Revised, p.1, Hearing Exhibit 19] Thus, the return on equity actually earned by a company may fall below some preconceived floor. The low return-on-equity results may be discounted by the analyst when making recommendations, but should not be eliminated entirely from the analysis.

Witness Ahern also double counted the projected earnings per share (EPS) growth rates in her DCF analysis. In Ahern's Schedule PMA-9, Page 1 of 12, the Value Line and Thomson FN/First Call EPS growth rate projections are included individually and again as an average. [Hearing Exhibit 10.] When Commissioner Wright asked witness Ahern about the impact on her DCF results due to the double counting, witness Ahern stated that removing the projected growth rates and calculating return on equity using historical growth rates have little impact because calculated return on equity for all companies except Alta America would be eliminated as their return on equity would be below the floor based on the yield of A-rated public utility bonds. The DCF cost rates would be 12.5% for Alta America and between 5.6% and 6.7% for the other companies. [Examination by Commissioner Wright, Tr. p. 216, l. 5 - p. 217, l. 12.]

Having adopted the return-on-equity testimony of ORS witness Dr. Johnson with the removal of his inclusion of a 0.4% stock issuance adjustment, which the Commission has determined to be inappropriate, results in a return-on-equity range of 9.1% to 10.7%. The Commission determines a 1.0% range on return on equity is appropriate and concludes that a return-on-equity range of 9.1% to 10.1% is appropriate for CWS. The Commission notes that the Natural Gas Rate Stabilization Act signed by the Governor on

February 16, 2005, directs the Commission to specify a 1.0% cost of equity range for natural gas utilities regulated by this Commission. Also, the parties agreed to, and the Commission adopted, a 1.0% range for return on equity in the recent South Carolina Electric & Gas Company rate case in Order No. 2005-2, Docket No. 2004-178-E. Based on the December 31, 2003, capital structure of Utilities, Inc., a 7.28% embedded cost of debt, and a 9.1% to 10.1% cost of equity, the appropriate cost of capital for CWS is 8.02% to 8.43%. Rates are to be set at a 9.1% return on equity and an 8.02% cost of capital. We are setting rates at the low end of the range in order to minimize the impact on the Company's customers, while allowing the Company to realize a reasonable rate of return and maintain its financial viability.

7. Using the capital structure of Utilities, Inc. consisting of 59.23% debt and 40.77% common equity, a cost of debt of 7.28%, and a cost of equity of 9.1%, we conclude that an appropriate overall rate of return on rate base of 8.02% is appropriate and should be authorized for CWS. The evidence supporting this conclusion is found in the testimony of ORS witness Johnson. The following table indicates the capital structure of the Company, the cost of debt, the cost of equity as approved in this Order, and the resulting rate of return on rate base:

TABLE A

	RATIO	EMBEDDED COST	OVERALL COST
Long-term Debt	59.23%	7.28%	4.31%
Common Equity	<u>40.77%</u>	9.10%	<u>3.71%</u>
TOTAL	<u>100.00%</u>		<u>8.02%</u>

8. By its Application, CWS is seeking an increase in its rates and charges for water and sewer service which results in \$1,801,488 of additional revenues to CWS, net of uncollectible accounts.

The evidence for the finding concerning the amount of the requested rate increase is contained in the Application filed by CWS and in the testimony and exhibits of ORS witness Scott. The record reflects that this amount was calculated utilizing the billing units including customer growth included in the Company's Application [Revised Exhibits D and E] and as included by ORS in its original and revised Audit Report [Audit Exhibit SGS-1 and Revised Audit Exhibit SGS-1, Hearing Exhibit 19]. The Application of CWS indicates that it is seeking additional revenues of \$180,854 more than booked revenue from water operations and additional revenues of \$1,634,674 more than booked revenue from sewer operations which, after adjustment for uncollectible accounts, totals \$1,801,488. [Application, Exhibit B, Schedule B, p. 1 of 4.] Additionally, ORS witness Scott testified that under the rates proposed in the Application CWS would see an increase in revenues of \$1,801,488. [Scott Revised Direct Prefiled testimony, p. 436, ll. 3-4, Hearing Exhibit 19, p. 6.] However, ORS had made adjustments to booked revenue of \$15,618 to Water Revenue and \$14,247 to Sewer Revenue to reflect revenue as adjusted under present rates. [Testimony of Sharon G. Scott, p. 436, ll. 13-18.] These adjustments produce Water Revenue as adjusted under present rates of \$1,836,269 and Sewer Revenue as adjusted under present rates of \$3,774,328. [Application, Revised Schedule D, p. 1 of 2 (Water) and Application, Revised Schedule D, p. 2 of 2 (Sewer)]

and ORS Revised Exhibit DMH-5 under Test Year Revenue Overview (Water and Sewer), Hearing Exhibit 17.]

The Company is requesting an increase in rates and charges to produce annual revenues of \$2,001,504 for water operations and \$5,394,755 for sewer operations. [Application, Revised Schedule E, p. 1 of 2 (Water), Revised Schedule E, p. 2 of 2 (Sewer) and Schedule B, p. 1 of 4.]

The difference in Water Revenue of \$2,001,504 [Application, Revised Schedule E, p. 1 of 2] under proposed rates and \$1,836,269 [Application, Revised Schedule D, p. 1 of 2] as adjusted Water Revenue under present rates results in a requested increase in Water Revenue of \$165,235. The difference in Sewer Revenue of \$5,394,755 [Application, Revised Schedule E, p. 2 of 2] under proposed rates and \$3,774,328 [Application, Revised Schedule D, p. 2 of 2] as adjusted Sewer Revenue under present rates results in a requested increase in Sewer Revenue of \$1,620,427, or a combined Water and Sewer Revenue requested increase of \$1,785,662.

The Commission finds that the proposed increase in Sewer Revenues of \$1,620,427 should be further reduced by \$74,392 to reflect approval by the Commission of the adoption of the Stipulation and Agreement between CWS and Midlands Utility, Inc. The Stipulation and Agreement states that “CWS no longer seeks approval of a bulk sewer treatment service rate of \$29.68 to be charged to Midlands Utility per single family equivalent per month for bulk sewer treatment service to Midlands’ Vanarsdale Subdivision service area.” The proposed rate to be charged to Midlands Utility, Inc. for the Vanarsdale Subdivision of \$29.68 produced annual revenues of \$150,397.

[Application, Revised Exhibit E, p. 2 of 2.] The approved rate of \$15.00 per the Stipulation and Agreement between CWS and Midlands Utility, Inc. produces annual revenues of \$76,005, utilizing the same billing units of 5,067, for a decrease in annual revenues requested of \$74,392.

The Commission, therefore, finds that the proposed rates and charges, as amended for the adjustments above and for approval of the Stipulation and Agreement between CWS and Midlands Utility, Inc., produce additional gross annual sewer revenues of \$1,546,035, or a total requested increase in water and sewer rates and charges of \$1,711,270. These amounts are calculated by utilizing the billing units, including Customer Growth, as included in the Company's Application [Revised Schedules D and E] and as included by ORS in its original and revised Audit Report [Audit Exhibit SGS-1 and Revised Audit Exhibit SGS-1, Hearing Exhibit 19.]

9. The appropriate operating revenues for CWS for the test year under present rates and after accounting and pro forma adjustments are \$5,674,555.

The evidence supporting this finding is in the testimony of Company witness Lubertozzi and ORS witness Scott. The application of CWS shows per book test year and as adjusted total operating revenues of \$5,644,689. [Application, Exhibit B, Schedule B, p. 1 of 4.] This amount included "Uncollectibles" of \$42,869 and miscellaneous revenues of \$106,827. [Id.] ORS adjusted test year operating revenues by \$29,865 based upon a bill frequency analysis it performed in connection with its audit, with water being adjusted by \$15,618 and sewer being adjusted by \$14,247. [Scott Pre-filed Revised Direct testimony, Tr. p. 436, ll. 13-18; Hearing Exh. No 19, p. 6, p. 9.]

ORS also included “Uncollectibles” of \$42,869 in the per books test year figures. [Id.] Thus, ORS computed as adjusted test year total operating revenues of \$5,674,555. Company witness Lubertozi agreed with the adjustment to operating revenues proposed by ORS. [Tr. p. 490, ll. 19-22; Tr. p. 491, ll. 10-14.] No other party presented any evidence pertaining to as adjusted test year total operating revenues. Therefore, the only evidence before the Commission on as adjusted total operating revenues is the \$5,674,555, and the Commission finds that to be the appropriate as adjusted test year total operating revenues.

10. The appropriate operating expenses for CWS for the test year under present rates and after accounting and pro forma adjustments and adjustments for known and measurable out-of test-year occurrences are \$5,276,647.

The evidence supporting this finding is contained in the Company’s application and in the testimonies of Company witness Lubertozi and ORS witness Scott. ORS offered certain adjustments to the Company’s proposed operating expenses for the test year which the Company accepted. [Scott Pre-filed Revised Direct testimony, Tr. p. 436, l. 19 - p. 443, l. 4, Tr. p. 447, l. 16 – p. 448, l. 4; Lubertozi Rebuttal Pre-filed testimony, Tr. p. 490, ll. 19-22; p. 491, ll. 10-14.] No other party of record offered testimony pertaining to the Company’s expenses or proposed adjustments thereto. These operating expenses and the adjustments agreed to by the Company and ORS which affect operating expenses, and the Commission’s determination as to each, are as follows:

(A) Operators' Salaries:

(1) Position of CWS: Initially, CWS proposed an adjustment to salaries of \$236,761, to be annualized as of June 30, 2004, to reflect salary and wages for six new operators and a manager to meet DHEC requirements for daily monitoring of water systems. At hearing, CWS agreed to the position of ORS on this adjustment, which proposed a total adjustment of \$141,365.

(2) Position of ORS: ORS adjusted to reflect only the four new operators hired and verified to CWS's payroll records and did not reflect the remaining three positions since they were not filled and therefore are not known and measurable. Although it accepted CWS's capitalization ratio, ORS reduced the amount of labor capitalized by \$3,969 to account for time spent by operators on capital projects. This resulted in a total adjustment of \$141,365 to salaries and wages.

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS.

(B) Consumer Price Index Adjustments

(1) Position of CWS: The Company initially proposed to increase certain maintenance and general expenses by 5.74% to reflect inflation utilizing the Consumer Price Index ("CPI") for Water and Sewerage Maintenance developed by the United States Department of Labor Bureau of Labor Statistics, the effect of which would have been to add \$84,311 to test year expenses. At hearing, CWS agreed with the position of ORS to disallow this adjustment.

(2) Position of ORS: In its Adjustment items numbers 3-9 and 13-17, ORS disagreed with the Company's proposal to adjust expenses using the CPI on the grounds that the adjustments would be made based upon economic forecasts which are not known and measurable.

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the agreement of the Company and ORS that this adjustment should not be made.

(C) Transportation Expenses

(1) Position of CWS: The Company initially proposed to increase this expense by \$16,434 to reflect seven new vehicles (for the seven new employees described in the Salary and Wage adjustment discussion above), the purchase of which was documented. At hearing, CWS agreed with the position of ORS to disallow three of the seven new vehicles proposed for inclusion under this adjustment leaving a total adjustment of \$14,208.

(2) Position of ORS: ORS proposed that this adjustment be allowed only to the extent that the employees who would utilize the vehicles had been hired. This results in a lower adjustment of \$14,208.

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS.

(D) Deferred Expenses:

(1) Position of CWS: CWS did not propose an adjustment to this item but agreed with the ORS proposal at hearing.

(2) Position of ORS: ORS proposed an adjustment of \$4,960 for Deferred Charges. ORS proposed to remove from Deferred Expenses a recurring, anticipated expense for tank maintenance for water operations of (\$13,057), but to include current expenses in the test year for tank maintenance of \$29,902. ORS also proposed to defer and amortize over three years hurricane and storm expenses of \$17,828, resulting in a net deferral for this expense category of (\$11,885). The ORS proposed a total adjustment to Deferred Expenses of \$4,960 which consisted of (\$13,057) plus \$29,902 plus (\$11,885). According to ORS, this adjustment is consistent with treatment of deferred expenses in the Company's last rate case.

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS. In *Porter v. South Carolina Public Service Commission*, 328 S.C. 222, 493 S.E.2d 92 (1997), the Supreme Court of South Carolina reviewed our decision in a previous rate case filed by the Company and held that a deferred expense is extraordinary in nature, i.e., one which is neither recurring nor anticipated. Accordingly, routine expenses required at regular intervals do not qualify as extraordinary. The Commission adopts the adjustment proposed by ORS as it is based upon *Porter v. South Carolina Public Service Commission, supra*.

(E) Office Salaries:

(1) Position of CWS: The Company proposed an adjustment of \$35,479 to General & Administrative Expenses to annualize office salaries. At hearing, however, the Company agreed with the proposal of ORS for a smaller adjustment.

(2) Position of ORS: ORS also proposed to annualize Office Salaries. ORS annualized the year-end payroll totaling \$304,053. From this amount, ORS subtracted the per book amount of \$290,536 for a net adjustment of \$13,517.

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS.

(F) Rate Case Expenses:

(1) Position of CWS: CWS proposed an adjustment for estimated rate case expenses of \$123,432, amortized over three years, less per book fully amortized rate case expense for an adjustment of (\$60,482). CWS updated its rate case expenses prior to hearing through documentation supplied to ORS and seeks recovery of rate case expenses of \$171,902. These included legal and consulting fees, direct time spent by corporate office staff, travel and associated expenses. CWS proposed to amortize rate case expenses over a three year period. At hearing, CWS agreed with the ORS position on rate case expenses.

(2) Position of ORS: ORS accepts the Company's updated rate case expenses totaling \$171,902 and the proposed amortization period of three years, which results in an adjustment of \$57,301. ORS subtracted the per book fully amortized adjustment of \$101,626, resulting in an adjustment of (\$44,325). ORS also included an additional \$9,000 related to expenses to update the Company's performance bond, consistent with the testimony of ORS witness Hipp and Company witness Lubertozi, yielding a total adjustment of (\$35,325).

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS.

(G) Pension and Other Benefits:

(1) Position of CWS: CWS proposed to annualize pension and other benefits associated with the wage adjustment for operators and office employees and proposed an adjustment of \$68,859. At hearing, CWS agreed with the ORS position on this adjustment.

(2) Position of ORS: ORS agreed that an adjustment was appropriate in this regard, but did not include part-time employee wages in its computation since they do not receive benefits. The ORS adjustment was \$45,435, which yields a test year pension and other benefits total, as adjusted, of \$251,971.

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS.

(H) Employee Bonuses:

(1) Position of CWS: CWS did not propose an adjustment to this item, but included in salaries and wages office employee bonuses of \$8,225 and corporate employee bonuses of \$14,462. At hearing, CWS agreed with the ORS adjustment to this expense item.

(2) Position of ORS: ORS proposed to remove bonuses for employees from operating expenses as it considers bonuses to be the responsibility of the stockholders, not the ratepayers. The total of the ORS adjustment is (\$22,687).

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS.

(I) Out of Period Expenses

(1) Position of CWS: CWS did not propose an adjustment for out of period expenses, but agreed at hearing with the ORS proposal for such an adjustment.

(2) Position of ORS: ORS proposed that test year expenses be adjusted to remove out of period expenses for property insurance (\$31,649), sewer rodding and maintenance and repairs (\$14,415) and non-allowable DHEC fines and entertainment expenses (\$22,850) for a total adjustment of (\$68,914).

(3) Decision of the Commission: Upon consideration of these expense items, the Commission adopts the adjustment agreed to by the Company and ORS.

(J) Depreciation Expense Adjustment:

(1) Position of CWS: CWS proposed an adjustment of \$79,436 to annualize Depreciation Expense. At hearing, CWS agreed with the position of ORS on depreciation expense adjustment.

(2) Position of ORS: ORS proposed to annualize Depreciation Expense with an adjustment of \$26,705. ORS' proposed adjustment included gross plant of \$37,107,047 plus verified plant to date of \$696,396 less Organization Expense, Land, Vehicles, Plant Acquisition Adjustment, and Advances in Aid for a net depreciable plant of \$36,588,217. ORS included depreciation expense associated with the Water Service Corporation rate base and for the amortization of excess book value. ORS made separate adjustments for the depreciation expense associated with the removal of wells. ORS used

a depreciation rate of 1.50% for plant other than vehicles and a 25.00% depreciation rate for vehicles per the recommendation of the ORS Water/Wastewater Department. ORS' total computed Depreciation amounted to \$616,647, less the per book amount of \$589,942, resulting in a net adjustment of \$26,705.

(3) Decision of the Commission: Upon consideration of these expense items, the Commission adopts the adjustment agreed to by the Company and ORS.

(K) Amortization of Contributions in Aid of Construction (CIAC):

(1) Position of CWS: CWS proposed to adjust the amortization for CIAC using a 1.50% depreciation rate. The total of CWS's proposed adjustment in this regard was \$15,286. At hearing, CWS agreed with the ORS position on this adjustment.

(2) Position of ORS: The ORS proposes to utilize the same depreciation rate as CWS, but submits an alternative calculation for this adjustment. Utilizing a gross per books CIAC amount of \$17,122,470, ORS calculates an amortization amount of (\$256,837). Subtracting the per book amount of (\$252,590) yields a total adjustment of (\$4,247).

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS.

(L) Retired Wells River Hills, I-20, Watergate and Westside Terrace:

(1) Position of CWS: CWS removed depreciation expense associated with wells which are no longer used and useful in its depreciation adjustment. At hearing, CWS agreed with the position of ORS on this matter.

(2) Position of ORS: ORS proposed an adjustment of (\$7,568) to remove depreciation expense for wells for the River Hills, I-20, Watergate and Westside Terrace water systems per the terms of the Commission's order in the last rate case.

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS.

(M) Extraordinary Retirement of Wells

(1) Position of CWS: CWS proposed to include \$29,924 in expenses as approved in the Company's last rate case.

(2) Position of ORS: ORS agreed with the Company's proposed adjustment.

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustment agreed to by the Company and ORS as being consistent with our last rate case order for CWS.

(N) Property Taxes

(1) Position of CWS: CWS included \$8,559 in property taxes for the retired wells in River Hills, I-20, Watergate and Westside Terrace and improperly recorded \$264,492 in property taxes actually paid in the test year. At hearing, CWS agreed with ORS' proposed adjustment to correct these expense items.

(2) Position of ORS: ORS proposed an adjustment of (\$8,559) to delete taxes on the retired wells and \$264,492 to include test year property taxes that were not properly recorded.

(3) Decision of the Commission: Upon consideration of this expense item, the Commission adopts the adjustments agreed to by the Company and ORS.

(O) Other Taxes:

(1) Position of CWS: CWS did not propose an adjustment for Utility/Commission taxes and Gross Receipts taxes associated with as adjusted revenues. The Company agreed at hearing to ORS' proposed adjustment in this regard.

(2) Position of ORS: ORS proposed to adjust Utility/Commission taxes and Gross Receipts taxes by a factor of .010733226 to account for increases in Commission and ORS administration costs and a revenue tax from the Department of Revenue resulting from upward adjustments in revenue. This resulted in an adjustment to this expense item of \$2,656.

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the adjustment agreed to by the Company and ORS.

(P) Income Taxes:

(1) Position of CWS: CWS proposed to adjust taxes for accounting and pro forma adjustments. CWS used a 5% rate for state taxes and a 34% rate for federal taxes.

(2) Position of ORS: ORS also proposed to adjust for the effect of income taxes after accounting and pro forma adjustments. Like CWS, ORS used a 5% rate for state taxes and a 34% rate for federal taxes.

(3) Decision of the Commission: The Commission adopts the method proposed by the Company and ORS to adjust taxes for accounting and pro forma adjustments. The Commission finds that a 5% rate for state taxes and a 34% rate for federal taxes is appropriate as those are the actual tax rates that apply to CWS. Based on

the adjustments adopted herein, the Commission approves an adjustment to Income Taxes of \$117,583 to eliminate negative per book Income Taxes.

(Q) Interest on Customer Deposits:

(1) Position of CWS: The Company did not propose an adjustment for this item, but agreed at hearing with the adjustment proposed by ORS in this regard.

(2) Position of ORS: ORS proposed an adjustment to annualize Interest on Customer Deposits by using the ORS verified amount as of June 30, 2004, of \$183,354 and by applying the Commission approved interest rate of 3.5%. ORS computed annualized Interest on Customer Deposits of \$6,417 less the per book amount of \$9,728 for an adjustment of (\$3,311).

(3) Decision of the Commission: The Commission adopts the adjustment agreed to by the Company and ORS. This adjustment annualizes the Interest on Customer Deposits at the end of the test year at the interest rate of 3.5%, which is the Commission approved rate for interest on customer deposits.

(R) Allowance for Funds Used During Construction (AFUDC)

(1) Position of CWS: CWS proposed an adjustment of (\$17,756) to remove the Allowance for Funds Used During Construction (“AFUDC”) from net income since it did not include Construction Work in Progress (CWIP) in rate base.

(2) Position of ORS: ORS agreed with the Company’s proposed adjustment

(3) Decision of the Commission: The Commission adopts the adjustment on this item agreed to by the Company and ORS.

(S) Customer Growth

(1) Position of CWS: CWS did not propose a separate calculation for Customer Growth as a component of Income for Return. However, CWS did include a Customer Growth component in its calculation of water revenue to be produced under proposed rates. CWS included a growth factor of 6.34% which was applied to billing units and usage (gallons) in calculating water revenue to be produced under proposed rates. [Application, Revised Schedule D, p. 1 of 2 and Revised Schedule E, p.1 of 2.]

CWS also included a growth factor of 2.49% which was applied to billing units in calculating sewer revenue to be produced under proposed rates. [Application, Revised Schedule D, p. 2 of 2 and Revised Schedule E, p. 2 of 2.] At the hearing, CWS agreed to the ORS report which included growth in revenue and also included a growth calculation using net operating income.

(2) Position of ORS: ORS adopted the proposed increase of \$1,815,528 (\$180,854 for water and \$1,634,674 for sewer) as included in the Company's Application which, as discussed above, included Customer Growth. [ORS Revised Audit Exhibit SGS-1, Hearing Exhibit 19 and Application, Schedule B, p. 1 of 4.] ORS also included a separate calculation for Customer Growth of \$23,825 after the requested increase based on the Commission's established formula method. [ORS Revised Audit Exhibit SGS-1 and Revised Audit Exhibit SGS-7, Hearing Exhibit 19.]

(3) Decision of Commission: Based on our revenue findings included herein, the Commission finds that a separate calculation for Customer Growth is unnecessary for this proceeding and would, in fact, include Customer Growth twice if included. The

Commission, therefore, eliminates the Customer Growth of \$23,825, as discussed above, after the proposed increase.

(T) Taxes Other Than Income– Proposed Increase

(1) Position of CWS: The Company proposed to increase Taxes Other Than Income by \$32,680 to reflect the effect of the proposed increase. At hearing, CWS agreed to the ORS position on this item.

(2) Position of ORS: ORS proposed that Taxes Other Than Income be adjusted to reflect the effect of the proposed increase, but used a factor of 0.010733226 (0.007733226 for the Commission and ORS and 0.003 for the Department of Revenue) to arrive at an adjustment of \$19,486.

(3) Decision of the Commission: Upon consideration of this item, the Commission finds, based upon our revenue findings included herein, that Taxes Other Than Income should be increased by \$12,300 (\$1,146,000 times .010733226).

(U) Income Taxes – Proposed Increase

(1) Position of CWS: The Company proposed that Income Taxes be established using current tax rates on calculated taxable income, which yields \$659,765 in allowable income tax. At hearing, CWS agreed with the ORS position on this item.

(2) Position of ORS: ORS proposed that Income Taxes be established after taking into account the proposed increase, which yields \$569,502 in allowable income tax.

(3) Decision of the Commission: Based upon our revenue and expense findings included herein, the Commission finds that Income Taxes should be adjusted by \$324,380 based on taxable income after the increase as approved herein.

Summary of Adopted Adjustments to Expenses:

The total effect of the adjustments to test year expenses adopted herein increase Operating and Maintenance Expenses by \$160,533, decrease General and Administrative Expenses by (\$67,974), increase Depreciation and Amortization Expenses by \$14,890, increase Taxes Other Than Income by \$271,224, increase Income Taxes by \$117,583, reduce Interest on Customer Deposits by (\$3,311), increase extraordinary retirement expense by \$29,924 and reduce AFUDC by (\$17,756). The net effect of the adjustments adopted herein on Total Operating Expenses is to increase Total Operating Expenses by \$522,869. Thus, operating expenses for the test year under present rates and after accounting and pro forma adjustments and adjustments for known and measurable out-of-test year occurrences are \$5,276,647.

The following table indicates the Company's gross revenues for the test year after adjustments approved herein, under the presently approved rate schedules; the Company's operating expenses for the test year after accounting and pro forma adjustments and adjustments for known and measurable out-of-test year occurrences approved herein; and the rate of return on rate base under the presently approved schedules for the test year:

TABLE B

	<u>Before Increase</u>
Operating Revenues	\$5,674,555
Operating Expenses	<u>5,276,647</u>
Net Operating Income	\$ 397,908
ADD: Allowance for Funds Used During Construction	0
Customer Growth	<u>0</u>
TOTAL INCOME FOR RETURN	<u>\$ 397,908</u>
Return on Rate Base	<u>2.66%</u>

11. The appropriate rate base for CWS for the test year after accounting and pro forma adjustments and adjustments for known and measurable occurrences outside the test year is \$14,940,867.

The evidence supporting this finding is contained in the Company's application and in the testimonies of Company witness Lubertozzi and ORS witness Scott. ORS offered certain adjustments to the Company's proposed rate base which the Company accepted. [Scott Pre-filed Revised Direct testimony, Tr. p. 443, l. 16 - p. 446, l. 21; Lubertozzi Rebuttal Pre-filed testimony, Tr. p. 490, ll. 19-22, Tr. p. 491, ll. 10-14.] No other party of record offered testimony pertaining to the Company's rate base or proposed adjustments thereto. The adjustments to rate base agreed to by the Company and ORS, and the Commission's determination as to each, are as follows:

(A) Removal of Wells

(1) Position of CWS: CWS proposed to remove from gross plant in service wells no longer used and useful in accordance with our last rate case order for the Company. See Item L, above. The CWS proposal of (\$277,315) included accumulated depreciation and did not take into account the plant costs for Westside Terrace. At hearing, CWS agreed with ORS' proposed adjustment.

(2) Position of ORS: ORS proposed to exclude \$10,804 of accumulated depreciation since the wells are no longer in service and to include plant costs of \$11,118 for Westside Terrace for a total adjustment to gross plant in service of (\$299,237).

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the adjustment agreed to by the Company and ORS.

(B) Excess Book Value

(1) Position of CWS: CWS proposed to remove Excess Book Value carried forward from the Company's last rate case. CWS calculated the amount of this adjustment to be (\$941,517) based upon a carry forward balance of \$978,199 amortized at 1.50%. At hearing, CWS agreed to the calculation for this item proposed by ORS.

(2) Position of ORS: ORS agreed that Excess Book Value should be removed using a 1.50% amortization rate, but calculated the carry forward balance to be \$1,026,646, which results in an adjustment of (\$924,905).

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the adjustment agreed to by the Company and ORS.

(C) Plant Sample Items

(1) Position of CWS: Per the order in the Company's last rate case, CWS proposed to remove plant sample items from rate base since the adjustment was not made per books in the amount of (\$9,108). At hearing, CWS agreed with the ORS calculation of this adjustment.

(2) Position of ORS: ORS also proposed an adjustment to rate base to remove plant sample items, but calculated the adjustment amount to be (\$8,597) to correct a mathematical error.

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the adjustment agreed to by the Company and ORS.

(D) Plant Additions

(1) Position of CWS: CWS proposed to adjust for plant additions.

(2) Position of ORS: ORS agreed that known and measurable plant additions providing service to present customers should be included and verified this amount to be \$696,396.

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the adjustment as calculated by ORS.

(E) Vehicles for New Employees

(1) Position of CWS: CWS proposed an adjustment of \$138,000 to include seven (7) new vehicles for new employees. See Items A and C, above under Finding of Fact No. 10. At hearing, CWS agreed with the adjustment proposed by ORS in this regard.

(2) Position of ORS: ORS proposed that an adjustment of \$82,829 be allowed for four (4) of the documented new vehicles to be utilized by the four (4) new employees which had been hired by the time of hearing.

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the adjustment agreed to by the Company and ORS.

(F) Pro Forma Plant

(1) Position of CWS: CWS proposed an adjustment for other pro forma plant of \$1,918,185.

At hearing, CWS agreed with the ORS position on this adjustment.

(2) Position of ORS: ORS proposed that no adjustment be allowed since the pro forma plant had not been placed into service as of December 31, 2004 and no known and measurable data supported making the adjustment.

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the ORS position on this adjustment which was agreed to by the Company.

(G) Capitalized Wages

(1) Position of CWS: CWS did not propose an adjustment for this item, but agreed at hearing to ORS' proposed adjustment.

(2) Position of ORS: ORS proposed an adjustment of \$50,685 to book to plant the portion of operators' wages, taxes and benefits associated with capital projects.

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the ORS position on this adjustment which was agreed to by the Company.

(H) Accumulated Depreciation

(1) Position of CWS: The Company proposed an accumulated depreciation adjustment of \$35,529 for removal of the wells, excess book value and post June 30, 2004 plant additions. At hearing, CWS agreed to the ORS position on this adjustment.

(2) Position of ORS: ORS proposed to adjust accumulated depreciation by (\$26,705) consistent with its annualized depreciation expense calculation. ORS further proposed that accumulated depreciation for wells and plant sample items from the last rate case totaling \$26,939 be removed resulting in a net adjustment of \$234.

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the ORS position on this adjustment which was agreed to by the Company.

(I) Cash Working Capital

(1) Position of CWS: CWS proposed to adjust cash working capital based on pro forma expense by \$50,343. At hearing, CWS agreed to the position of ORS on this adjustment.

(2) Position of ORS: ORS proposed an adjustment to cash working capital based on pro forma expenses excluding Taxes Other Than Income as a working capital item since that is ordinarily an accrual that does not require a cash outlay and CWS

would have collected it from customers in advance of paying certain taxes. The resultant adjustment is (\$46,496).

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the ORS position on this adjustment which was agreed to by the Company.

(J) Water Service Corporation (WSC) - Rate Base

(1) Position of CWS: CWS proposed an (\$8,457) adjustment to the WSC rate base which includes deferred expenses from the last rate case. At hearing, CWS agreed to the ORS position on this item.

(2) Position of ORS: ORS agreed that the WSC rate base should be adjusted, but proposed that the deferred expenses allocated to the Company be removed from the WSC rate base verified by ORS. The ORS asserts that certain deferred charges that are allowed in expenses should not be permitted in rate base which results in a sharing of expenses between customer and stockholder. The resultant adjustment is (\$2,609).

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the ORS position on this adjustment which was agreed to by the Company.

(K) Advances in Aid of Construction

(1) Position of CWS: The Company did not propose an adjustment to this item, but agreed at hearing to the ORS position in this regard.

(2) Position of ORS: ORS proposed to remove Advances in Aid of Construction of \$1,600 from Rate Base, which are owed to the customer, on the grounds that CWS should not be permitted to earn a return on customer supplied funds.

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the ORS position on this adjustment which was agreed to by the Company.

(L) Customer Deposits

(1) Position of CWS: CWS did not include \$245,763 as a reduction in rate base that consisted of accrued interest owed to customers on deposits. At hearing, CWS agreed to the ORS position on this item.

(2) Position of ORS: ORS proposed to exclude from rate base interest accrued and due customers on deposits on the grounds that a return should not be permitted on customer supplied funds. The resultant adjustment would be (\$245,763).

(3) Decision of the Commission: Upon consideration of this item, the Commission adopts the ORS position on this adjustment which was agreed to by the Company.

Summary of Adopted Adjustments to Rate Base:

The total effect of the adjustments to rate base adopted herein reduce Gross Plant in Service by (\$402,829), decrease Accumulated Depreciation by \$234 [thereby resulting in a reduction to Net Plant in Service of (\$402,595)], reduce Cash Working Capital by (\$46,496), reduce WSC rate base by (\$2,609), include Advances in Aid of Construction of (\$1,600) and include accrued interest on Customer Deposits of (\$245,763). The total

of the adjustments adopted herein reduce total rate base by (\$699,063). Thus, after the adjustments adopted herein, as adjusted rate base is \$14,940,867. The following table indicates the Company's rate base for its jurisdictional operations in South Carolina after accounting and pro forma adjustments approved herein:

TABLE C

Gross Plant in Service	\$36,704,218
LESS: Accumulated Depreciation	<u>(4,781,663)</u>
Net Plant in Service	\$31,922,555
ADD:	
Cash Working Capital	521,361
Water Service Corp. – Rate Base	127,824
DEDUCT:	
Advances in Aid of Construction	(1,600)
Contributions in Aid of Construction	(15,195,347)
Plant Acquisition Adjustment	(482,719)
Accumulated Deferred Income Taxes	(1,522,090)
Customer Deposits	<u>(429,117)</u>
TOTAL YEAR END RATE BASE	<u>\$ 14,940,867</u>

12. The income requirement for CWS, using the return on rate base of 8.02% found appropriate in this Order and the adjusted rate base of \$14,940,867, is \$1,198,366.

Under rate of return on rate base regulation, the Commission must approve an income requirement that will permit the Company to cover operating costs and provide an opportunity to earn the approved rate of return on rate base. The determination of the income requirement requires a calculation using approved Operating Revenues and approved Operating Expenses to determine Net Operating Income for Return. Net Operating Income for Return is then increased for approved AFUDC and approved

Customer Growth resulting in Total Income for Return. The following table illustrates the calculations of CWS's Total Income for Return:

TABLE D

	<u>After Increase</u>
Operating Revenues	\$6,811,693
Operating Expenses	<u>5,613,327</u>
Net Operating Income For Return	\$1,198,366
ADD: Allowance for Funds Used During Construction	0
Customer Growth	<u>0</u>
TOTAL INCOME FOR RETURN	<u>\$1,198,366</u>
 Return on Rate Base	 <u>8.02%</u>

As demonstrated on Table D, Total Income for Return after the increase approved herein is \$1,198,366.

13. In order for CWS to have the opportunity to earn its income requirement of \$1,198,366, CWS must be allowed additional revenues totaling \$1,146,000 or \$1,137,138 after uncollectibles.

In order for the Company to have the opportunity to earn the 8.02% rate of return on rate base approved herein, the Commission must increase revenues sufficient to achieve a Total Income for Return of \$1,198,366, as calculated in Finding of fact No. 12. The additional revenue calculated for the Company to have the opportunity to earn its approved rate of return of 8.02% requires an increase of \$1,146,000.

14. In designing rates for CWS, a uniform rate schedule for customers is appropriate. Accordingly, the sewer rates for customers in Lincolnshire service area, I-20 service area, Lexington service area, Kings Grant service area, and Teal on the Ashley service area will be increased to a level commensurate with those to be charged to other customers.

Upon determination of the revenue requirements for a utility in a ratemaking proceeding, the next step is the determination of the specific rates or rate structure that will yield the required revenues. A generally accepted principle is that proper utility regulation requires the exercise of control over a utility's rate structure. *The Regulation of Public Utilities, supra.*

In designing rates for the Company, the Commission strives to set rates that are "just and reasonable" and without undue discrimination. In the case before the Commission, CWS has requested uniform rates. The Commission finds that such a uniform rate schedule is fair and reasonable and is in the best interests of the customers and CWS. In the Company's last rate case, it did not seek increases for those customers in the Lincolnshire service area, the I-20 service area, and the Lexington service area. Order No. 2001-887 at 68. The reasoning for this divergence in rates as expressed by CWS's witness in that proceeding was that the status of the Company's operation and even its ownership of the systems serving those areas was in a state of flux. *Id.* Those systems were operating under expired NPDES or ND permits and were the subject of either current or potential litigation. *Id.* The uncertainty of the outcome of the issues involving those service areas led CWS not to seek rate relief for sewer treatment in those

service areas. *Id.* Because the Commission felt that similar circumstances appertained with respect to the Company's Kings Grant and the Teal on the Ashley service areas, we found it appropriate to exclude the customers in those service areas from the sewer rate increase as well as those excluded by CWS's application. In short, our departure from a uniform rate structure in the Company's last rate case was warranted by special facts and circumstances. *See August Kohn & Co. Inc. v. Public Service Comm'n*, 290 S.C. 409, 313 S.E.2d 630 (1984). However, the Commission concludes that these special facts and circumstances no longer exist.

At hearing in the instant proceeding, Company witness Lubertozzi observed that even though some of the circumstances regarding the excluded sewer service areas had not changed since the last rate case, continued exclusion of these areas was no longer warranted. [Lubertozzi Pre-filed Direct testimony, Tr. p. 291, ll. 5 - 26.] Mr. Lubertozzi stated that the Company's position in this regard in the last rate case was predicated upon its belief that uncertainties regarding the ultimate disposition of these sewer systems would have been resolved prior to the instant filing. [*Id.*, Tr. p. 291, l. 28 - p. 292, l. 5.] That belief has now been disproven and no other party of record produced evidence to demonstrate that these uncertainties would be resolved at any near date. Thus, rather than being a "special" circumstance as contemplated in *August Kohn, supra*, the evidence of record demonstrates that, in any given rate case, the Company may be expected to have unresolved issues regarding future ownership and/or interconnection of its treatment facilities. Moreover, the application reveals that the Company currently holds valid

permits from DHEC for the operation of all five of these sewer facilities. [See Application Exhibit “C.”]

We conclude that the further exclusion of these five sewer service areas from rate adjustments is not warranted. We are mindful that the impact of the increase in sewer rates approved by this order on customers in these areas will be greater than that felt by other customers. However, countervailing that is the fact that the customers in these five areas will have enjoyed lower sewer rates than the Company’s other sewer customers for nearly four (4) years by the time the rates approved herein will become effective. Moreover, to continue excluding customers in these areas from rate adjustments would foster undue discrimination against other customers. *Cf., The Regulation of Public Utilities, supra*, at 171. It is incumbent upon us to approve rates which **fairly** distribute the Company’s revenue requirement. *Seabrook Island POA v. S.C. Public Service Comm’n*, 303 S.C. 493, 401 S.E.2d 672 (1991). In light of the foregoing, a fair distribution of the Company’s revenue requirement cannot exist if large numbers of sewer customers continue to be excepted from rate adjustments and we decline to do so.

15. The resultant operating margin for CWS, based upon the adjustments and rates approved herein, is 8.13%. S.C. Code Ann. Section 58-5-240(H) (Supp.2004) provides, in part, that “[t]he [C]ommission shall specify an allowable operating margin in all water and wastewater orders.” Based upon the rate of return on rate base approved herein and the revenues and expenses also approved herein, the corresponding operating margin is calculated to be 8.13%. The following Table reflects an operating margin of 8.13%:

TABLE E

Operating Revenues	\$6,811,693
Operating Expenses	<u>5,613,327</u>
Net Operating Income	\$1,198,366
ADD: Allowance for Funds Used During Construction	0
Customer Growth	<u>0</u>
Total Income for Return	<u>\$1,198,366</u>
Operating Margin (After Interest Expense of \$644,242) ⁷	<u>8.13%</u>

16. The Company's requested modifications to its water and sewer rate schedule provisions pertaining to billing tenants for the convenience of a landlord and the addition of a provision to its water rate schedule for implementing a cross-connection control program are appropriate as being in the public interest and are hereby approved.

The evidence supporting this finding of fact is contained in the Company's application, the testimony of its witness Haas [Haas Pre-filed Direct Testimony, Tr. p. 325, l.25 - p. 327, l. 2], and the testimony of ORS witness Hipp [Hipp Pre-filed Direct Testimony, Tr. p. 420, ll. 1-14.] As noted by both witnesses, an amendment to S.C. Code Ann. § 27-33-50 (Supp. 2004) requires a revision to the tenant billing provisions of the Company's rate schedule. We further agree with these witnesses that DHEC regulation 24A S.C. Code Ann. R. 61-58.7.F.8 prohibits maintenance of a cross-connection to a

⁷ CWS proposed to include interest expense of \$735,823 based upon the Company's as adjusted rate base, 59.23%/40.77% debt/equity ratio and a cost of debt of 7.28%. ORS proposed to include interest expense of \$644,242, which results in an adjustment to the Company proposal of (\$91,581), to reflect usage of the adjusted rate base and not the Company's pro forma rate base. At hearing, CWS agreed to the ORS position on this item. The Commission adopts the ORS position on this adjustment which was agreed to by the Company.

public water system unless a cross-connection inspection is performed annually on required backflow prevention devices. Because it is the decision of a customer to install a cross-connection, the burden of compliance with the DHEC regulations in this regard should be borne by the customer. Given that ORS supports these modifications, and no other party opposed them, we find the Company's requested rate schedule modifications to be in the public interest and approve same.

17. The night hearings conducted by the Commission in this Docket raised quality of service issues, specifically related to customer service, water quality, and compliance with the regulations of the South Carolina Department of Health and Environmental Control (DHEC).

(A) Customer Service

This Commission heard a great deal of testimony from CWS customers in our night hearings regarding the quality of service which those customers had received. Almost without exception, the testimony painted an unflattering picture of the Company. The testimony presented instances of sewer backups, difficulty establishing service connections, termination of service incidents, and rude treatment from CWS personnel. On the other hand, we note that ORS witness Hipp testified that CWS' customer complaint procedures are in compliance with PSC regulations, and that she "was pleased with their complaint, their ability to handle and log and track complaints, with their ability versus some other companies". [Tr. p. 429.] We are also mindful of the Company's rebuttal testimony in this regard [e.g. Tr., Haas at 464] The public hearing

testimony is anecdotal in nature, but it is nevertheless a cause for concern. At a minimum, there is no question that Carolina Water Service has a serious customer relations problem.

Also, although it is clear that CWS maintains records of customer complaints by entering the details of each telephone call or written complaint into a computerized database⁸, it is apparent that CWS did not have a systematic approach to reviewing these complaints and their outcomes. Complaints were entered into a database, and customer complaints were anecdotally reviewed in monthly Staff meetings. However, Company witness Haas testified that no periodic reports of customer complaints were generated by the Company, which would allow the company to be aware of the volume of its customer complaints. [Tr., pp. 367-369.] This Commission has always considered customer service and quality of service to be components of rate cases. *Seabrook Island Property Owners Ass'n. v. South Carolina Public Service Commission*, 303 S.C. 493, 498, 401 S.E.2d 672, 674 (1991). It is also important that CWS's customers have some way to determine whether the company is addressing their concerns. Accordingly, we hold that the following measures shall be instituted to deal with this issue:

1. Beginning December 31, 2005, Carolina Water Service shall generate semesterly reports of its customer complaints, and provide them to the Office of Regulatory Staff for review and such further action as that agency shall deem appropriate. The reports should include, at a minimum, all information required by 26 S.C. Code Ann. Regs. 103-516 and 103-716 (Supp. 2004), including the

⁸ Prefiled testimony of Hipp, p. 4.

name and address of each complainant, the date and character of the complaint, and the adjustment or disposal made thereof;

2. Carolina Water Service shall notify each customer, through its monthly bills, of its complaint procedures, and provide its customers with the toll-free telephone number for the Office of Regulatory Staff;

3. Carolina Water Service shall notify any customer making a complaint that remains unresolved after seven days, that the utility is under the jurisdiction of this Commission and that the customer may contact ORS directly regarding their complaint, and that in providing such notice, that Carolina Water Service furnish the complaining customer with ORS' toll-free telephone number and mailing address.

We would note that if the Company's customer complaint records reveal a problem, there are several remedies available to ORS and the public, including, but not limited to petitions for sanctions and penalties, or even a request for a review and reduction of the Company's rates. See, e.g., S.C. Code Ann. Section 58-5-290 (1976).

(B) Water Quality

A number of Carolina Water Service's customers complained of poor water quality. However, there is no testing data in the record which would allow this Commission to make findings regarding the odor, taste, or turbidity of the Company's water in connection with this rate hearing. These complaints are a cause of concern to this Commission, since the Company's customers are entitled to get what they pay for. Accordingly, we hold as follows:

1. ORS shall develop tests for compliance with 26 S.C. Code Ann. Regs. 103-770 and other applicable statutes and regulations which require water to be potable, and insofar as practicable, free from objectionable odor, taste, color and turbidity.

2. ORS shall conduct such tests on the water produced by the facilities connected with this case within twelve (12) months from the date of this Order, in such frequency as it deems necessary to ascertain compliance, so that ORS and this Commission may take additional action, if any, that they deem necessary based on the results of these tests.

(C) DHEC Compliance

There is testimony in the record that Carolina Water Service has been fined by DHEC on several occasions, but there is no record before the Commission explaining the specific nature of these violations or the amount of the fines. [Tr. Lubertozzi, p. 511-512] We would note the language of 26 S.C. Code Ann. Regs. 103-713 (C), which states in part that "...Water Utilities under the jurisdiction of the Commission shall file with the Commission in writing a notice of any violation of PSC or DHEC rules which affect the service provided to its customers. This notice shall be filed within 24 hours of the time of the inception of the violation and shall detail the steps to be taken to correct the violation, if violation is not corrected at time of occurrence. The Company shall notify the Commission in writing within 14 days after the violation has been corrected." ORS witness Dawn Hipp testified that the Company had failed to file these notices. [Tr., p. 416.]

The Company has taken the position that it was not obligated to report these violations – the nature of which are still unknown – to the Commission or to ORS. This Commission is troubled by this lack of information and believes that it is important that the ORS be timely provided with such data.

Accordingly, we hold that DHEC violations, by their very nature, affect the service provided to Carolina Water Service's customers, and that the Company:

1. shall file with ORS, in writing, a notice of any violation of DHEC rules or regulations as determined by DHEC, within 24 hours of the time of a finding that the violation occurred, and
2. shall detail the steps to be taken to correct the violation if the violation is not corrected at the time of its occurrence, and to also notify ORS in writing within 14 days after the violation has been corrected; and
3. within 60 days of the date of this Commission's Order, to provide ORS with such data regarding any violations of DHEC rules and regulations which have occurred over the previous twelve months.

This reporting system will allow ORS to make an informed determination about the Company's compliance with DHEC rules and regulations, provide a database on this topic, and will also allow ORS to take action, if any, that it deems necessary in the future.

18. It is in the public interest to require a performance bond in the amount of \$700,000 for the Company.

The Commission's regulations state bond amounts must range from an amount not less than \$100,000 and not more than \$350,000. The bond amount is also set forth in

S.C. Code Ann. § 58-5-720 (Supp. 2004). ORS witness Dawn Hipp testified that the bond requirement for CWS should be increased to \$350,000 for water operations and \$350,000 for sewer operations based on expenses from the test year. [Tr., pp. 417-418.] Therefore, this Commission finds that in order to provide sufficient financial assurance to both the customer and the Commission in the event that the Company fails to provide safe and adequate service, a bond in the amount of \$700,000 is required.

IV. CONCLUSIONS OF LAW

Based upon the Findings of Fact as contained herein and the record of the instant proceeding, the Commission makes the following Conclusions of Law:⁹

1. Rate of return on rate base is the appropriate guide for the Commission to use in determining the lawfulness of the rates of CWS and in fixing of just and reasonable rates for CWS to charge its customers in South Carolina.

2. A fair rate of return on rate base for the operation of CWS in South Carolina is 8.02%. This rate of return is calculated using a capital structure of 59.23% debt and 40.77% equity, a cost of debt of 7.28%, and a return on equity of 9.10%. Based on the discussion and analysis of the Commission as detailed in this Order, these components of capital structure, cost of debt, and cost of equity and the resulting rate of return on rate base produce a fair and reasonable rate of return which the Company should have the opportunity to earn.

⁹ The Commission's analyses which give rise to the Conclusions of Law are contained in the discussions of Section III of this Order.

3. For the test year of June 30, 2004, the appropriate operating revenues, under present rates and as adjusted in this Order, are \$5,674,555, and the appropriate operating expenses, under present rates and as adjusted in this Order, are \$5,276,647.

4. Using the rate base as adjusted in this Order of \$14,940,867 and the return on rate base of 8.02% found to be fair and reasonable in this Order, the income requirement for CWS is \$1,198,366.

5. In order for CWS to have an opportunity to earn the return on rate base found reasonable and approved in this Order and to meet the income requirement, CWS must be allowed additional revenues of \$1,146,000.

6. The rates approved in this Order are designed to be just and reasonable without undue discrimination and are also designed to meet the revenue requirements of the Company.

7. Based on the adjustments approved herein and the increase in rates approved herein, the appropriate operating margin for CWS on its South Carolina operations is 8.13%.

8. The Company's requested modifications to certain terms and conditions of service in its rate schedule is in the public interest.

9. The Company shall institute the notification and reporting requirements with regard to customer service, water quality, and DHEC compliance as stated supra.

10. The appropriate bond requirement for the Company is \$700,000.

CONCLUSION

This Commission is aware that this Order will be a source of some public consternation. The law requires that CWS be allowed to earn a reasonable rate of return for its services, and in deciding on such a rate, the Commission is constrained by the evidence before it and the applicable law. No party to this case argued that CWS' application for a rate increase should be denied altogether, they only disagree as to the size of the recommended increase. The Commission considered the rate of return testimony provided by CWS' expert witness and the testimony of the expert called by the Office of Regulatory Staff and set a rate accordingly. We have considered the testimony of the many CWS customers who attended public hearings and expressed dissatisfaction with the service which they are receiving and the rates that they are paying. While these comments cannot be ignored, the testimony does not give the Commission a basis for declining CWS' Application. In *Heater Utilities, Inc. v. Public Service Commission of South Carolina*, Memorandum Op. No. 95-MO-365 (S.C. S.Ct. Dec. 8, 1995) the South Carolina Supreme Court reversed this Commission's decision to deny a rate increase because of "the absence of any scientific criteria" to support its decision. In other words, while the Commission finds that the testimony of the Company's customers is relevant to these proceedings, it cannot form the sole basis for denying a rate increase in the absence of other objective, quantifiable, evidence. This Commission was not presented with any quantifiable, objective data regarding water quality, sewerage odors, or customer service which could provide the basis for denying CWS's rate increase. Nevertheless, the Commission has herein adopted detailed measures designed to address such problems,

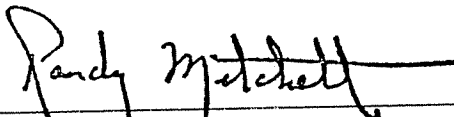
and to adequately document the company's future service. At the hearing, we were also informed by ORS that the agency will conduct a management audit of CWS. We welcome the initiative, which, at a minimum, will help reassure those customers who are concerned that increased rates will not be accompanied by quality service.

IT IS THEREFORE ORDERED THAT:

1. CWS is granted the opportunity to earn a rate of return on rate base for its water and sewer operations in South Carolina of 8.02%.
2. The schedule of rates and charges attached hereto as Appendix A, which include the Company's proposed modifications, are hereby approved for service rendered on or after the date of this Order. Further, the schedules are deemed to be filed with the Commission pursuant to S.C. Code Ann. Section 58-5-240 (Supp. 2004).
3. Should the schedules approved herein and attached hereto as Appendix A not be placed in effect until three (3) months from the effective date of this Order, the schedules shall not be charged without written permission from the Commission.
4. CWS shall maintain its books and records for water and sewer operations in accordance with the NARUC Uniform System of Accounts for Class A Water and Sewer Utilities, as adopted by this Commission.
5. The Company shall institute the notice and reporting requirements with regard to customer service, water quality, and DHEC compliance as stated supra.
6. CWS shall post with this Commission a bond with a face value of \$700,000 to satisfy the findings in this Order within ninety (90) days of receipt of this Order.

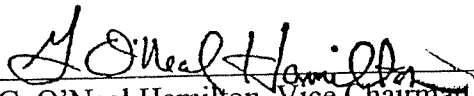
7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice Chairman

(SEAL)

APPENDIX A

CAROLINA WATER SERVICE, INC.

FILED PURSUANT TO DOCKET NO. 2004 -357-WS – ORDER NO. 2005-328
EFFECTIVE DATE: JUNE 22, 2005

SCHEDULE OF RATES AND CHARGES WATER

1. Monthly Charges

Residential

Base Facilities Charge per single family
house, condominium, mobile home
or apartment unit:

\$10.25 per unit

Commodity Charge:

\$3.32 per 1,000
gallons or 134 cft

Commercial

Base Facilities Charge
by meter size:

5/8" meter		\$10.25
1" °		\$25.62
1.5" °		\$51.25
2" °		\$82.00
3" °		\$164.00
4" °		\$256.25

Commodity Charge:

\$3.32 per 1,000
gallons or 134 cft

Charges for Water Distribution Only

Where water is purchased from a government body or agency or other entity
for distribution and resale by the Company, the following rates apply:

Residential

Base Facilities Charge per single family
house, condominium, mobile home
or apartment unit:

\$10.25 per unit

Commodity charge:

\$1.90 per 1,000
gallons or 134 cft

When, because of the method of water line installation utilized by the developer or owner, it is impractical to meter each unit separately, service will be provided through a single meter, and consumption of all units will be averaged; a bill will be calculated based on that average and the result multiplied by the number of units served by a single meter.

APPENDIX A

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June 22, 2005

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2. Nonrecurring Charges
 - A) Water Service Connection (New connections only) \$300 per SFE*
 - B) Plant Impact Fee (New connections only) \$400 per SFE*

3. Account Set-Up and Reconnection Charges
 - a. Customer Account Charge - for new customers only.
All Areas \$ 13.50

- b. Reconnection Charges: In addition to any other charges that may be due, a reconnection fee of thirty five dollars (\$35.00) shall be due prior to the Utility reconnecting service which has been disconnected for any reason set forth in Commission Rule R.103-732.5. Customers who ask to be reconnected within nine months of disconnection will be charged the monthly base facility charge for the service period they were disconnected. The reconnection fee shall also be due prior to reconnection if water service has been disconnected at the request of the customer.

4. Billing Cycle

Recurring charges will be billed monthly in arrears. Nonrecurring charges will be billed and collected in advance of service being provided.

5. Extension of Utility Service Lines and Mains

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to connect to its water system. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to any appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule, and comply with the guidelines and standards hereof, shall not be denied service, unless water supply is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving water system. In no event will the Utility be required to construct additional water supply capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding water supply capacity to the affected water system.

6. Cross Connection Inspection Fee

Any customer installing, permitting to be installed, or maintaining any cross connection between the Utility's water system and any other non-public water system, sewer or a line from any container of liquids or other substances, must install an approved back-flow prevention device in accordance with 24A S.C. Code Ann. Regs. R.61-58.7.F.2 (Supp. 2003), as may be amended from time to time. Such a customer shall annually have such cross connection inspected by a licensed certified tester and provide to Utility a copy of a written inspection report and testing results submitted by the certified tester in accordance with

24A S.C. Code Ann. Regs. R.61—58.7.F.8.(Supp. 2003), as may be amended from time to time. Said report and results must be provided by the customer to the Utility no later than June 30th of each year. Should a customer subject to these requirements fail to timely provide such report and results, Utility may arrange for inspection and testing by a licensed certified tester and add the charges incurred by the Utility in that regard to the customer's next bill.

- * A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Health and Environmental Control Guidelines for Unit Contributory Loadings for Domestic Wastewater Treatment Facilities -- 25 S.C. Code Ann. Regs. 61-67 Appendix A (Supp. 2003), as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service and tap fee.

SCHEDULE OF RATES AND CHARGES

SEWER

1. Monthly Charges

Residential - charge per single-family house, condominium, villa, or apartment unit:	\$36.46 per unit
Mobile Homes:	\$26.20 per unit
Commercial:	\$36.46 per SFE*

Commercial customers are those not included in the residential category above and include, but are not limited to, hotels, stores, restaurants, offices, industry, etc.

Charge for Sewer Collection Only

When sewage is collected by the Utility and transferred to a government body or agency, or other entity, for treatment, the Utility's rates are as follows:

Residential - per single-family house, condominium, or apartment unit	\$23.47 per unit
Commercial - per single-family equivalent	\$23.47 per SFE*

The Utility will also charge for treatment services provided by the government body or agency, or other entity. The rates imposed or charged by the government body or agency, or other, entity providing treatment will be charged to the Utility's affected customers on a pro rata basis, without markup. Where the Utility is required under the terms of a 201/208 Plan, or by other regulatory authority with jurisdiction over the Utility, to interconnect to the sewage treatment system of a government body or agency or other entity and tap/connection/impact fees are imposed by that entity, such tap/connection/impact fees will be charged to the Utility's affected customers

on a pro rata basis, without markup.

The Utility will, for the convenience of the owner, bill a tenant in a multi-unit building, consisting of four or more residential units (or in such other circumstances as the law may allow from time to time), which is served by a master sewer meter or a single sewer connection. However, in such cases all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure of an owner to pay for services rendered to a tenant in these circumstances may result in service interruptions.

Solids Interceptor Tanks

For all customers receiving sewage collection service through an approved solids interceptor tank, the following additional charges shall apply:

A. Pumping Charge

At such time as the Utility determines through its inspection that excessive solids have accumulated in the interceptor tank, the Utility will arrange for pumping the tank and will include \$150.00 as a separate item in the next regular billing to the customer.

B. Pump Repair or Replacement Charge

If a separate pump is required to transport the customer's sewage from solids interceptor tank to the Utility's sewage collection system, the Utility will arrange to have this pump repaired or replaced as required and will include the cost of such repair or replacement and may be paid for over a one year period.

C. Visual Inspection Port

In order for a customer who uses a solids interceptor tank to receive sewage service from the Utility or to continue to receive such service, the customer shall install at the customer's expense a visual inspection port which will allow for observation of the contents of the solids interceptor tank and extraction of test samples therefrom. Failure to provide such a visual inspection port after timely notice of not less than thirty (30) days shall be just cause for interruption of service until a visual inspection port has been installed.

2. Nonrecurring Charges

A) Sewer Service Connection (New connections only)	\$300 per SFE*
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Page 7

B) Plant Impact Fee (New connections only)

\$400 per SFE*

The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating of a non residential customer is less than one (1). If the equivalency rating of a non residential customer is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the sewer system is requested.

3. Notification, Account Set-Up and Reconnection Charges

a. Notification Fee

A fee of four dollars (\$4.00) shall be charged each customer to whom the Utility mails the notice as required by Commission Rule R. 103-535.1 prior to service being discontinued. This fee assesses a portion of the clerical and mailing costs of such notices to the customers creating the cost.

b. Customer Account Charge - for new customers only.

All Areas

\$ 13.50

A one-time fee to defray the costs of initiating service. This charge will be waived if the customer also takes water service.

c. Reconnection Charges

In addition to any other charges that may be due, a reconnection fee of two hundred fifty dollars (\$250.00) shall be due prior to the Utility reconnecting service which has been disconnected for any reason set forth in Commission Rule R.103-532.4. Where an elder valve has been previously installed, a reconnection charge of thirty-five dollars (\$35.00) shall be due. Customers who ask to be reconnected within nine months of disconnection will be charged the monthly service charge for the service period they were disconnected.

4. Billing Cycle

Recurring charges will be billed monthly, in arrears. Nonrecurring charges will be billed and collected in advance of service being provided.

5. Toxic and Pretreatment Effluent Guidelines

The Utility will not accept or treat any substance or material that has been defined by the United States Environmental Protection Agency ("EPA") or the South Carolina Department of Health and Environmental Control ("DHEC") as a toxic pollutant, hazardous waste, or hazardous substance, including pollutants falling within the provisions of 40 CFR 129.4 and 401.15. Additionally, pollutants or pollutant properties subject to 40 CFR 403.5 and 403.6 are to be processed according to the pretreatment standards applicable to such pollutants or pollutant properties, and such standards constitute the Utility's minimum pretreatment standards. Any person or entity introducing any such prohibited or untreated materials into the Company's sewer system may have service interrupted without notice until such discharges cease, and shall be liable to the Utility for all damages and costs, including reasonable attorney's fees, incurred by the Utility as a result thereof.

6. Extension of Utility Service Lines and Mains

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to discharge acceptable wastewater into one of its sewer systems. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to an appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule and to comply with the guidelines and standards hereof, shall not be denied service, unless treatment capacity is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving sewer system.

In no event will the Utility be required to construct additional wastewater treatment capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding wastewater treatment capacity to the affected sewer system.

- * A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Health and Environmental Control Guidelines for Unit Contributory Loading for Domestic Wastewater Treatment Facilities -- 25 S.C. Code Ann. Regs. 61-67 Appendix A (Supp. 2003), as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service and tap fee.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-357-WS

2005 JUN 14 PM 4:23
Carolina Water Service, Inc.

IN RE:)
)
Application of Carolina Water Service,)
Inc. for adjustment of rates and)
charges and modification of certain terms)
and conditions for the provision of water)
and sewer service.)
_____)

**PETITION FOR REHEARING OR
RECONSIDERATION AND,
ALTERNATIVELY, REQUEST FOR
APPROVAL OF BOND**

Carolina Water Service, Inc. ("CWS"), pursuant to S.C. Code Ann. § 58-5-330 (1976), 26 S.C. Code Ann. Regs. 103-881 (Supp. 2004), and other applicable law, submits this petition for rehearing or reconsideration of Order No. 2005-328 in the above-captioned matter, and in support thereof would respectfully show as follows:

1. On December 17, 2004, CWS filed an Application seeking approval of a new schedule of rates and charges for water and sewer services it provides to customers in South Carolina. The Application sought an increase in annual service revenues of \$1,801,488.00.

2. After holding four "night hearings" on April 18, 2005, April 20, 2005, April 26, 2005 and May 2, 2005, and a public hearing on May 4 and 5, 2005, the Commission issued its Order No. 2005-328, dated June 22, 2005, addressing certain issues in this docket approving a schedule of rates designed to grant CWS an increase in annual water and sewer revenues of \$1,146,000.00 based upon an authorized return on rate base of 8.02%. Service of Order No. 2005-328 was made upon counsel for CWS by certified mail on June 24, 2005.

3. Regretfully¹, CWS submits that Order No. 2005-328 prejudices its substantial rights because certain findings, inferences, conclusions, and decisions made therein are erroneous, unsupported by substantial evidence, arbitrary and capricious, characterized by abuse of discretion, in violation of constitutional or statutory provisions, made upon unlawful procedure, or affected by other errors of law or fact, as set forth herein.

4. Order No. 2005-328 adopts 9.1% as an appropriate return on equity for CWS based upon three primary conclusions, i.e., (i) that the testimony of ORS witness Johnson takes into account “investor’s long-run expectations for long-term dividend growth” [Order No. 2005-328 at 16-17], (ii) that the Commission may properly establish a maximum range of returns on equity in this case of 1.0% and restrict the allowed return on equity to such a range within the confines of the overall range adopted [Order No. 2005-328 at 18-19], and (iii) that the Commission may set rates at “the low end of the [resulting 9.1% to 10.1%]² range in order to minimize the impact on the Company’s customers.” [Order No. 2005-328 at 18-19.] For several reasons, the effect of the adoption of this return on common equity is to deny CWS the rate relief to which it is entitled under law and the evidence of record in this case.

¹CWS recognizes the difficulties attendant to the discharge of the Commission’s ratemaking function and the myriad of interests and emotions which can be presented in that context. CWS certainly does not wish to burden the Commission with unnecessary matters and therefore does not unadvisedly seek reconsideration in this case. To the contrary, CWS does so most respectfully and in the sincere belief that its substantial rights will be adversely affected if it were to fail to do so.

²Although Order No. 2005-328 states that the range of supported returns on equity adopting Dr. Johnson’s DCF analysis is 9.1% to 10.7% after adjusting out the .4% flotation adjustment proposed by the witness [Id. at 16], it appears to CWS that the range intended to be stated in Order No. 2005-328 is actually 9.1% to 10.4% since the witness proposed a range of 9.5% to 10.8%.

- (a) CWS challenged the testimony of ORS witness Johnson regarding a proper return on equity on the ground that his testimony was based exclusively upon historical data. [Order No. 2005-328 at 16-17.] Citing to Dr. Johnson's surrebuttal testimony, Order No. 2005-328 appears to conclude that Dr. Johnson did not rely upon historical data only, but accounted for average investor long-run expectations for dividend growth in his 5.5% – 6.5% growth rate through an exercise of his "judgment." [Id., citing, *inter alia*, Tr. p. 259, l. 22- p. 261, l. 15.] The reliance upon this testimony is error since there is no evidentiary support whatsoever for Dr. Johnson's putative exercise of judgment. In other words, although Dr. Johnson rendered an opinion to the Commission based upon the historical data *plus* an exercise of his judgment with respect to future investor expectations, there is no evidence or record demonstrating the facts, data or reasoning he relied upon to reach his "judgment" in this regard. This is plain error as expert opinion testimony may not be accepted unless there is an evidentiary showing of the facts upon which the opinion is based; as a matter of law, such an opinion does not constitute substantial evidence. *See Hamm v. Southern Bell Telephone & Telegraph Co.*, 302 S.C. 132, 394 S.E.2d 311 (1990) *cert. denied*, ___ U.S. ___, 111 S.Ct. 1018, 112 L.Ed.2d 1099 (1991), *citing*, *Parker v. S.C. Public Service Comm'n*, 281 S.C. 215, 314 S.E.2d 597 (1984); also *see* S.C. Code Ann. § 58-5-240(H) (Supp. 2004).
- (b) No witness discussed the appropriateness of "a 1% range on return on equity" to be established and imposed within the range of returns otherwise testified to as is adopted by Order No. 2005-328. [Id. at 18-19.] Nonetheless, such a restriction is

imposed by Order No. 2005-328 based upon two grounds. The first is that the legislature, in 2005 S.C. Act 16, has “direct[ed] the Commission to specify a 1.0% cost of equity range for natural gas utilities regulated by th[e] Commission.” [Id.] The second ground is that the parties to another, recent proceeding involving a gas utility “agreed to, and the Commission adopted, a 1% range for return on equity.” [Id. at 19, citing Order No. 2005-2, in Docket No. 2004-178-E.] This determination to establish and apply a 1% maximum range of return on equity within the confines of the range adopted by the Commission constitutes error for several reasons.

S.C. ACT 16

First, and as already alluded to above, there is no evidence of record supporting adoption of this artificial “mini-range” of allowable returns on equity. Accordingly, Order No. 2005-328 is unsupported by substantial evidence of record in this regard.

Second, Order No. 2005-328 incorrectly interprets the pertinent provisions of S.C. Act 16 as providing for the Commission to establish service rates for a gas utility within an artificial 1% range of returns on equity otherwise supported by evidence of record. To the contrary, Section 1 of S.C. Act 16 adds new sections 58-5-400, *et seq.*, which provide for a streamlined method by which gas utilities may apply for rate relief based upon changes in rate components other than purchased gas. In that context, the Commission is required to “specify a range for the utility’s cost of equity that includes a band of fifty basis points (0.50 percentage points) below and fifty basis points (0.50 percentage points) above the cost of equity **on which rates have been set.**” See S.C. Act 16, Section 1, to be codified as § 58-5-420(1) (emphasis supplied). In other words, the range is specified only after service rates

have been determined by adoption of an allowable return on equity. The purpose of requiring the Commission to make such a specification is to provide benchmarks within which the Commission may examine whether a gas utility's rates should be raised or lowered **in the future**, depending upon whether the company's performance within a given 12 month monitoring period is below the lower end or exceeds the upper end of the specified range. See S.C. Act 16, Section 1, to be codified as § 58-5-440. Thus, rather than being directed to establish service rates in gas cases employing a range of returns on equity not to exceed 1.0% within an otherwise allowable range, as Order No. 2005-328 suggests, the legislature has directed the Commission in S.C. Act 16 to specify the range resulting from a fifty basis point spread on either side of the allowed return on equity used to set gas rates for future comparison purposes in the context of a streamlined gas rate regulatory procedure. In sum, S.C. Act 16 does not in any manner provide for the establishment of gas service rates by imposing a "mini-range" within otherwise allowable returns on equity.

Third, even if S.C. Act 16 could be read in the manner suggested by Order No. 2005-328, it has no application in the context of the instant case since, by its own terms, it applies only to "a public utility providing natural gas distribution service" and only when such a utility elects the streamlined regulatory treatment permitted thereunder. See S.C. Act 16, Section 1, to be codified as § 58-5-410. By comparison, the statutory provisions applicable to water and sewer utility rate adjustment proceedings contain no authorization for a streamlined ratemaking process. See S.C. Code Ann. § 58-5-240 (Supp. 2004). Because the Commission only has such authority as is granted to it by the legislature, the exercise of extra-statutory powers in this part of Order No. 2005-328 is error. *See S.C. Cable Television*

Ass'n v. The Public Service Commission of South Carolina, 313 S.C. 48, 437 S.E.2d 38 (1993).

“AGREED” RANGE IN DOCKET NO. 2004-178-E

Fourth, the reliance upon the parties’ stipulation regarding a 1.0% range of reasonable returns on equity, and the Commission’s adoption of a different 1.0% range of returns on equity, in a recently concluded gas case to support a similar determination in Order No. 2005-328 is error on several levels. Initially, CWS would again note that there is no evidence of record supporting the imposition of this restriction upon the range of otherwise allowable returns on equity as no witness offered any testimony or exhibit in this regard. Also, a practice observed in another, unrelated case may not be applied in the instant case without an explanation of the evidence of record supporting the application of that practice. *See Hamm v. PSC*, 309 S.C. 282, 422 S.E.2d 110 (1992); *see also Heater of Seabrook, Inc. v. PSC*, 332 S.C. 20, 503 S.E.2d 739 (1998). The fact that parties of record proposed and the Commission adopted a (different) range of allowable returns on equity – which only happened to be 1.0% – in another case is simply inadequate to constitute substantial evidence of record on any point in the instant case. Moreover, Order No. 2005-328 is devoid of any reasoning or analysis supporting the determination in this regard. This, too, is error under *Heater*. Furthermore, the Commission’s practice in Docket No. 2004-178-E, even if it were supported by substantial evidence of record and the analysis as required by *Hamm* and *Heater of Seabrook, supra*, is inapposite in the instant case. This is so because the parties’ stipulation and the Commission’s decision in Docket No. 2004-178-E involved the determination of a reasonable range of returns on equity **in the first instance** as a component

of the overall rate of return. Here, the Commission had already determined that an allowable range of returns on equity was 9.1% to 10.4%. [Order No. 2005-328 at 16 and n. 1, *supra*.] The imposition of an additional restriction in the form of this “mini-range” simply deducted 30 basis points, or 0.30%, from the allowable range already determined without evidentiary or analytical basis. This arbitrary and capricious determination also constitutes legal error in light of *Hamm* and *Heater*.

Fifth, even assuming that a mini-range of ROE’s may be properly imposed in the context of the instant case, CWS was not informed in advance of the hearing that the Commission would only consider recommended ROE’s restricted to a 1.0% range. Thus, CWS was not aware that the testimony of witnesses should be so tailored and was prejudiced by the lack of notice in this regard since it had no ability to present evidence or cross examine witnesses in the case in this regard. The effect of this is to deny CWS the process due it under the law. See S.C. Const. art. I, § 22. Also see *Porter v. Public Service Comm’n*, 338 S.C. 164, 525 S.E.2d 866 (2000).

- (c) Order No. 2005-328 concludes that it is proper for the Commission to select 9.1% as the appropriate return on equity for CWS for the express purpose of minimizing the impact of the rate adjustment on customers. [Id. at 18-19.] This is error for several reasons. First, Order No. 2005-328 contains no discussion or analysis of the reasons customers are entitled to have the impact of a rate increase minimized by setting the allowable return on equity at the lowest end of the range adopted. This is contrary to the holding of *Heater, supra*. Furthermore, no explication is provided of how the determination was made that effectively eliminating 90% of the adopted

range of returns “allows the Company to realize a reasonable rate of return and maintain its financial viability.” [Order No. 2005-328 at 19.] Conclusory statements not supported by evidence of record described in the order are legally insufficient. See *Heater*, S.C. Code Ann. § 1-23-350 (2004) and § 58-5-240 (H). Finally, and most importantly, the stated intent of Order No. 2005-328 to set rates in a manner designed to minimize the impact on customers is inconsistent with the Commission’s charge under law to **balance** the interests of utilities and their ratepayers. See *Seabrook Island Property Owners Association v. S.C. Public Service Comm’n*, 303 S.C. 493, 401 S.E.2d 672 (1991); also see *S.C. Cable Television Ass’n, supra*, citing *Southern Bell v. Public Service Comm’n*, 270 S.C. 590, 244 S.E.2d 278 (1978). In fact, the Commission recognized that this duty continues to bind it in its rate base regulation decisions in the very same gas rate case that is cited in Order No. 2005-328. See Order No. 2005-2, Docket No. 2004-178-E, at 84. Applying the required balancing of interests in that docket, the Commission adopted a return on equity at the lower end of the adopted range in that case, finding that same “fulfill[ed] the Commission’s legal responsibility to balance the interests of consumers, SCE&G and shareholders.” *Id.* at 100. Thus, within an allowable range of 10.4% to 11.4% in that case, the Commission selected 10.7%. By contrast, Order No. 2005-328 does not balance the competing interests at play in this case in arriving at an allowable return on equity, but intentionally eschews any balancing in favor of an outcome expressly intended to favor ratepayers by going to the bottom of an allowable range. This is error since it reflects that there was no balancing of interests.

5. CWS submits that Order No. 2005-328 determines rates in an erroneous, arbitrary, and capricious manner. Order No. 2005-328 concludes that CWS must be allowed additional revenues of \$1,146,000, or \$1,137,138 after uncollectibles, in order for the Company to have an opportunity to receive the authorized return on rate base of 8.02%. [Id. at 45.] To give effect to this conclusion, Order No. 2005-328 adopts a schedule of rates which, in addition to granting the full measure of water rate relief requested, authorizes a monthly sewer service charge of \$36.46 per residential unit or single family equivalent (“SFE”). [Order No. 2005-328, Appendix A.] By comparison, in its proposed order, ORS recommended that the Commission adopt a lower return on rate base (7.78%), yet concluded that this entitled CWS to a higher monthly residential sewer service charge (\$37.47 per unit or SFE) than approved by the Commission (in addition to the full water rate increase requested). This anomalous result arises out of the fact that Order No. 2005-328 rejects the customer growth adjustment of \$23,825 proposed by ORS – using the Commission’s standard and established formula which was agreed to by CWS – on the ground that ORS had included customer growth in both determining revenues produced under the proposed rates and in arriving at a separate customer growth factor. [Id. at 34-35.] This is error for several reasons.

- (a) First, the rejection of ORS’s customer growth adjustment using the Commission’s standard formula is contrary to the Commission’s established practice of requiring that customer growth rates be applied to both revenues and expenses. Under Order No. 2005-328, the Commission has effectively adopted as a customer growth rate the customer growth component reflected in the Company’s revised calculation of proposed water and sewer revenues. [Id. at 20, 34.] However, and as Order No. 2005-328 reflects, the Company did not propose that growth component as a separate

adjustment for ratemaking purposes. [Id. at 34.] By adopting only the customer growth component stated in the Company's revenue calculation as a customer growth adjustment for ratemaking purposes, Order No. 2005-328 saddles the Company with the liability of customer growth on the revenue side but denies it with the corresponding benefit to the Company on the expense side. The Commission has routinely rejected such a one-sided adjustment for customer growth, including the proposal of the Consumer Advocate to that effect in the Company's last rate case. See Order No. 2001-887, Docket No. 2000-207-W/S, August 27, 2001 at 63-65.³ Therein, the Commission noted that an adjustment applied to net income, as proposed by ORS in the instant case, achieves the requirement that customer growth adjustments apply to revenues and expenses. [Id.] CWS submits that the rejection of ORS's proposed customer growth adjustment is therefore error. *330 Concord Street Neighborhood Association v. Campsen*, 309 S.C. 514, 424 S.E.2d 538 (Ct. App. 1992).

- (b) Second, and as Order No. 2005-328 acknowledges, the customer growth component of CWS's revenue calculation was not proposed as a customer growth adjustment for ratemaking purposes. [Id. at 34.] Thus, there is no evidence of record supporting the

³In rejecting the Consumer Advocate's proposal to adjust only revenues for customer growth in that case, the Commission noted that the traditional Commission Staff adjustment, while not precise, took into account both revenues and expenses. Order No. 2001-887 at 64. The Commission then stated its belief that "any adjustment for customer growth **must** necessarily also **take into account increases in expenses**. While it cannot be stated with absolute certainty that the addition of customers adds expenses in a directly proportionate manner, **one cannot assume that the addition of customers does not increase expenses**. [The Consumer Advocate's] proposed adjustment only factors in one side of the equation (i.e., revenues) and ignores expenses." Id. at 65 (emphasis supplied).

adoption of the 6.34% water and 2.49% sewer growth components as a customer growth adjustment which ignores customer growth with respect to expenses.

- (c) Third, as a result of adopting a customer growth adjustment applying only to revenue, Order No. 2004-328 overstates the additional annual revenue required to achieve a return on rate base of 8.02%, but understates the monthly sewer service rate required to achieve the proper additional revenue to which the Company is entitled. This is so because, in order to achieve the permitted 8.02% return on rate base when a customer growth adjustment of 6.34% for water and 2.49% for sewer is properly applied to net income (i.e., to both revenues and expenses), the resulting additional annual revenues total only \$1,077,178 and yield monthly sewer service charges of \$37.76 per residential unit or SFE, \$26.99 per mobile home, and \$24.33 per collection only unit or SFE.⁴ Attached hereto and incorporated herein by reference as Petition Exhibit 1 are five (5) schedules prepared by the Company demonstrating this result. Alternatively, should the ORS proposed customer growth adjustment be used, which applies a rate of 1.82% to water net income and 1.36% to sewer net income, the resulting additional revenue required to achieve an 8.02% return on rate base is \$1,117,000 and the monthly sewer service charges are \$38.14 per residential unit or SFE, \$27.21 per mobile home, and \$24.37 per collection only unit or SFE. Attached hereto and incorporated herein by reference as Petition Exhibit 2 are five (5) schedules prepared by the Company demonstrating this result.

⁴These are very close to the monthly sewer rates recommended by ORS in its proposed order, which are \$37.74 per residential unit or SFE, \$27.31 per mobile home, and \$23.92 per collection only unit or SFE.

CWS therefore submits that the Commission should reconsider Order No. 2005-328 in this regard and adopt a growth adjustment which is consistent with one of the two scenarios set out in paragraph 5(c) hereof, reflect the correct additional revenues required to achieve a return on rate base of 8.02%, and revise Appendix A to the order accordingly.

6. Based upon the night hearing testimony of approximately three-tenths of one percent (.3%) of the Company's total customer base,⁵ Order No. 2005-328 concludes that the Company's quality of service, specifically "customer service, water quality and compliance with the regulations of . . . (DHEC)" are issues which the Commission will address through the adoption of certain measures applicable to CWS. [Order No. 2005-328 at 50.] For the following reasons, CWS submits that the findings and conclusions in this regard set out in Order No. 2005-328 are erroneous in light of the substantial evidence of record and that the measures imposed are contrary to or in excess of law and violate the Company's due process rights:

- (a) In view of the size of the Company's customer base, CWS submits that the level of customer testimony complaining about service is immaterial. *Cf. Porter v. S.C. Public Service Comm'n*, 328 S.C. 222, 493 S.E.d 92 (1997) (holding that a variance in expenses of approximately .3% not material to determination of the Company's allowable rate base.)⁶ Not all of these customers testified regarding quality of service

⁵The Company's test year customers total approximately 15,800. [Order No. 2005-328 at 8.] Accordingly, 54 customers constitute .3417% of the Company's total customer base.

⁶In footnote 2, Order No. 2005-328 states that "[a] total of 229 customers attended the night hearings in this case" and that "[i]t is reasonable to assume that more customers would have spoken but for the lateness of the hour and the desire to refrain from duplicative testimony." [Id. at 2.] In addition to being wholly speculative in nature – since the Commission heard from none of these customers and therefore cannot know whether the persons in attendance were all "customers" or that they would have duplicated testimony given by customers – there is no evidence of record to support

or customer service issues, with many confining their comments to concerns over rates. Some of these customers stated that they had experienced no problems with the Company's service. Furthermore, the vast majority of customers testifying at the night hearings were in the Company's River Hills service area near Lake Wylie. According to the evidence of record, ORS conducted an unannounced inspection of the Company's River Hills system. [Tr. p. 406, ll. 6-15.] Yet there is no evidence in the record, based upon the objective inspection of the River Hills system by ORS, that a customer service or quality of service issue exists in that service area. See Hearing Exhibits 16 and 17. To the contrary, ORS concluded that CWS provides adequate service and meets all customer relation standards established under Commission regulations. The Commission may take notice of its own records, which show that not one complaint has been filed with the Commission by a CWS customer under S.C. Code Ann. § 58-5-270 (Supp. 2004) since the completion of the Company's last rate case. CWS respectfully submits that the foregoing clearly demonstrates why the Commission cannot properly rely upon the very limited and "anecdotal" evidence of the type cited in Order No. 2005-328 as it is not such as

the number of customers in attendance at the night hearings. Accepting for the sake of argument, however, that 229 persons were in attendance at the four night hearings and were all customers, this means that less than 1.5% of the Company's customers even felt compelled to attend the night hearings. And, as the ORS audit reflects, only eighteen (18) complaints were made to the ORS Consumer Services division or its predecessor by customers regarding the Company's service or billing practices in the test year. [Hearing Exhibit 17 at DMH-2, p. 1.] This means that exactly one and one-half complaints per month were filed with ORS concerning the Company during the test period, which, relative to the total customer base of 15,800 and the annual number of bills issued by CWS, is **infinitesimally** low.

would permit a reasonable person to form a conclusion with respect to the Company's overall quality of service and customer service.

- (b) Order No. 2005-328 concludes that there is "cause for concern" with respect to "customer service" and "quality of service" and therefore imposes upon CWS certain duties with respect to recording and reporting to ORS customer complaints. [Id. at 51-52.] In support of this, Order No. 2005-328 cites *Seabrook Island Property Owners Ass'n v. South Carolina Public Service Commission*, 303 S.C. 493, 401 S.E.2d 672 (1991) for the proposition that the "Commission has always considered **customer service** and quality of service to be components of rate cases." [Id. at 51, emphasis supplied.] CWS respectfully submits that the cited case makes no reference to "customer service," and therefore does not support the Commission's findings in this regard. Moreover, with respect to the quality of the Company's service, the applicable caselaw makes clear that the Commission is only informed with respect to quality of service by reference to the adequacy of service – i.e., whether the Company maintains facility sufficient to provide adequate service as required under Commission rules. See *Patton v. Public Service Comm'n*, 280 S.C. 288, 312 S.E.2d 257 (1984). Based upon the testimony of ORS witnesses Morgan and Hipp, the Company provides adequate service. Thus, Order No. 2005-328 is erroneous in its conclusion that there exists a "quality of service" issue.
- (c) Order No. 2005-328 also concludes that, although CWS maintains customer complaint records on a computer data base showing the identity of the customer, date and time of complaint, nature of complaint, nature of resolution and date and time

of resolution – which ORS witness Hipp noted fully complies with Commission requirements (Tr. p. 416, ll. 2-17) – “CWS did not have a systematic approach to reviewing these complaints and their outcomes.” [Order No. 2005-328 at 51.] Order No. 2005-328 further concludes that “no periodic reports of customer complaints were generated by the Company, which would allow the company [sic] to be aware of the volume of its customer complaints.” The Order also concludes that “Company witness Haas testified that no periodic reports of customer complaints were generated by the Company.” [Id.] Based upon these conclusions, Order No. 2005 directs CWS (i) to make “semesterly reports of its customer complaints and provide them to [ORS] for review and such further action as that agency shall deem appropriate,” with such reports to contain, at a minimum, the information required under RR. 103-516 and 103-716 (Supp. 2004), (ii) notify customers through monthly billings of the Company’s “complaint procedures” and provide customers with the ORS’s toll-free telephone number, and (iii) notify complaining customers whose complaints are not resolved within seven days that the Commission has jurisdiction over the Company and that the customer may contact ORS directly, providing its toll-free number and mailing address. [Id at 51-52.]

Initially, CWS submits that the only evidence of record in this case is that the Company meets all of the Commission’s regulations pertaining to quality (i.e., adequacy) of service and customer relations⁷ and that this Commission has not been presented with a single customer complaint against

⁷See 26 S.C. Code Ann. Regs. RR. 103-530 through 103-540, 103-570, 103-730 through 103-742 and 103-770 through 103-774 (all 1976, as amended).

CWS since the Company's last rate case. In that light, the inability of Company witness Haas on the witness stand to provide precise data on the number of complaints made to the Company by its customers is irrelevant. Moreover, that does not mean that the Company is incapable of capturing and reviewing that data – only that Mr. Haas could not do it from the witness stand. As the testimony of ORS witness Hipp reflects, the Company is capable of providing such data. [Tr. p. 428, l. 7 – p. 429, l. 16.] Furthermore, there is no requirement that the Company capture complaint information in the “periodic” manner required by Order No. 2005-328; to the contrary, and as was pointed out at hearing, the Commission's regulations with respect to recording and summarizing customer complaint data have been **relaxed** by the Commission. [Tr. p.372, l. 14 – p. 373, l. 11.] Cf. 26 S.C. Code Ann. Regs. RR. 103-516 and 103-716 (1976) and 26 S.C. Code Ann. Regs. RR. 103-516 and 103-716 (Supp. 2004). Additionally, implementation of these directives would contravene the provisions of the Administrative Procedures Act since they effectively amend RR. 103-516 and 103-716. These regulations have established binding norms for water and sewer utilities with respect to recordation of customer complaints. Since no notice of any such amendment has been given, enforcement of this portion of Order No. 2005-328 would be contrary to S.C. Code Ann. § 1-23-110 (Supp. 2004). Similarly, the provisions of Order No. 2005-328 pertaining to the content of customer bills, resolution of customer complaint issues and notice to customers of their ability to contact ORS are in excess of the Commission's statutory authority and exceed the requirements of the Commission's regulations. Moreover, there was no testimony from any customer that demonstrated that customers do not know how or where to complain to ORS. To the contrary, ORS witness Hipp reported that 18 customers did complain to ORS regarding the Company's service or billing during the test year. Furthermore, the imposition of billing

requirements inconsistent with S.C. Code Ann. Regs. RR. 103-532 and 103-732 (Supp. 2004) effectively amends Commission rules in violation of § 1-23-110.

CWS therefore submits that the requirements of paragraphs 1, 2 and 3 at pages 51-52 of Order No. 2005-328 are not supported by the substantial evidence of record, exceed the Commission's authority under law, and subject the Company to binding norms not properly adopted by the Commission in rulemaking proceedings under the APA.

7. Order No. 2005-328 concludes that although "a number of [CWS's] customers complained of poor water quality," there was "no testing data in the record which would allow this Commission to make findings regarding the odor, taste or turbidity of the Company's water **in connection with this rate hearing.**" [Id. at 52 (emphasis supplied).] Based upon the further conclusion that "customers are entitled to get what they pay for" (Id.), the Commission then directs that ORS develop tests "on the water produced by the facilities connected with this case" for compliance with 26 S.C. Code Ann. Regs. R. 103-770 (1976) "so that ORS and this Commission may take additional action" if necessary. This portion of Order No. 2005-328 is unsupported by, or is erroneous in view of, the substantial evidence of record and is in excess of the Commission's authority under law and its own regulations for the following reasons:

- (a) Initially, CWS notes that the number of customers complaining of the quality of water was very low, with no more than thirteen (13) of the Company's 5,800 water customers testifying in this regard.⁸ This is approximately two-tenths of one percent

⁸See Transcript Volume 1, p. 23, l. 18 - p. 24, l. 4; Transcript Volume 2, p. 29, l. 18 - p. 30, l. 4; p. 53, ll. 18-25; Transcript Volume 3, p. 25, ll. 11-14; p. 39, ll. 14-25; p. 77, ll. 1-10 and p. 84, ll. 21-24; Transcript Volume 4, p. 14, ll. 21-25; p. 17, ll. 8-11; p. 19, ll. 13-15; p. 25, ll. 1-6, and Transcript Volume 5, p. 61, l. 23 - p. 62, l. 6.

(.2%) of the Company's water customer base. Of these 13 customers, eight (8) are served by systems in which the water source is bulk water.⁹ CWS submits that a reasonable mind could not form a conclusion with respect to the **overall** quality of the water supplied by the Company based simply upon this testimony. Thus, the directives contained in this portion of the order are unsupported by substantial evidence.

- (b) Additionally, the fact that no testing data exists in the record with respect to the odor, taste and turbidity of the water supplied by CWS is irrelevant to the issues properly before this Commission in the instant docket. There is no requirement that the Company supply water testing data with its application. See 26 S.C. Code Ann. Regs. R. 103-712.4.A.13 (Supp. 2004).¹⁰ Moreover, as 26 S.C. Code Ann. RR. 103-770 reflects, water testing is to be conducted by "the responsible State . . . agency." The agency charged by the legislature with responsibility for testing water is DHEC – not ORS. See S.C. Code Ann. §§ 44-55-10, *et seq.* (Revised 2002). Pursuant to regulations promulgated thereunder, DHEC is authorized to test for turbidity, taste and odor control.¹¹ DHEC was a party in the instant case and made absolutely no

⁹See Transcript Volume 3, p. 25, ll. 11-14; p. 39, ll. 14-25; p. 77, ll. 1-10 and p. 84, ll. 21-24 and Transcript Volume 4, p. 14, ll. 21-25; p. 17, ll. 8-11; p. 19, ll. 13-15; p. 25, ll. 1-6; Hearing Exhibit 16, p. 29; Tr. p. 470, l. 14 - p. 71, l. 14 and p. 475, ll. 7-14.

¹⁰The Company takes this opportunity to renew its contention that the requirements of S.C. Code Ann. § 1-23-320(a) (Revised 2005) are violated when, as here, issues are treated by the Commission on less than thirty (30) days notice. See also S.C. Const. art. I, § 22. *Cf.* Order No. 2005-328 at 4-6.

¹¹See 24A S.C. Code Ann. Regs. RR. 61-58.10.B, 61-58.3.D(10) and R.61-58.2.D(9) (Supp. 2004). Also see *Marsh V. Oregon Natural Resources Council*, 490 U.S. 360, 364, n. 2 (1989)

assertion to the Commission that the quality of water supplied by CWS was deficient in any manner. Furthermore, the record reflects that ORS had access to the sanitary surveys conducted by DHEC with respect to the Company's water facilities; yet ORS did not assert to the Commission that the DHEC surveys revealed violations on the Company's part. [Tr. p. 407, ll. 19-23.] Similarly, although it limited its sampling procedures to those endorsed by EPA, ORS noted that it detected no odor at any of the Company's water supply facilities. [Tr. p. 408, ll. 7-10.]

- (c) Furthermore, even assuming that data should have been made available to address water odor, taste and turbidity, the inquiry of whether water supplied by CWS is, "insofar as practicable, free from objectionable odor, taste and color" is not properly at issue in the instant case since there is absolutely no evidence of record that this standard has not been met. Read properly, R. 103-770 places upon CWS only one absolute requirement, which is: to provide potable water; there is absolutely no evidence of record that the Company's water is not potable. The remainder of this regulation simply requires that, **where practicable**, the water supplied not contain objectionable odor, taste or color. There is quite simply no evidence of record that water supplied by CWS contains objectionable odor, taste or color when it is practicable for CWS to supply water that is free from same.

- (d) Finally, CWS is unaware of any statutory authority whereby ORS may conduct the tests on water directed by the Commission. Commission Regulation R. 103-770.C

(quoting U.S. Army Corps of Engineers for the proposition that "[t]urbidity is an expression of the optical property of water which causes light to be scattered and absorbed rather than transmitted through in straight lines.")

provides only that CWS submit samples for examination “by the responsible State or local agencies.” As noted above, the legislature has designated DHEC as the state agency responsible for water testing. Moreover, it is questionable that ORS could engage in any meaningful testing as the majority of CWS’s water customers are supplied bulk water generated by local government suppliers [Hearing Exhibit 18] over whom neither the Commission nor ORS have jurisdiction.

CWS therefore submits that the requirements of paragraphs 1 and 2 at pages 52-53 of Order No. 2005-328 are not supported by, or are erroneous in light of, the substantial evidence of record, and exceed the Commission’s authority under law.

8. Order No. 2005-328 finds that CWS was fined by DHEC for violations of that agency’s regulations during the test year, but that “there is no record before the Commission explaining the specific nature of these violations or the amount of fines.” [Id. at 53.] Order No. 2005-328 then further concludes that DHEC violations “by their very nature, affect the services provided to Carolina Water Service’s customers.” [Id. at 53-54.] Based upon this conclusion, Order No. 2005-328 creates a “reporting system” placing stringent reporting requirements upon the Company. For the following reasons, this portion of Order No. 2005-328 is unsupported by, or is erroneous in view of, the substantial evidence of record, is arbitrary and capricious, is violative of the South Carolina constitution, and is in excess of the Commission’s authority under law and its own regulations.

- (a) The record reflects that the total amount of DHEC fines incurred by the Company in the test year is approximately \$21,000.00, none of which was claimed for ratemaking

purposes.¹² [Id., Tr. p. 511, l. 25 – p. 512, l. 3.] Accordingly, the finding of Order No. 2005-328 in this regard is erroneous in light of the substantial evidence of record.

- (b) Order No. 2005-328 concludes “that there is no record of the specific nature of [the Company’s test year DHEC] violations.” [Id. at 53.] Yet, the Commission later concludes that “DHEC violations, by their very nature, affect the service provided to Carolina Water Service’s customers.” These inconsistent conclusions plainly demonstrate the arbitrary and capricious nature of Order No. 2005-328 in regard to the reporting of the Company’s test year DHEC violations. On the one hand, Order No. 2005-328 notes that the Commission lacks information pertaining to the nature of the violations, and on the other hand states that the nature of the violations does not matter.
- (c) This portion of Order No. 2005-328 also departs from the plain language of the provisions of 26 S.C. Code Ann. RR. 103-513 (C) and 103-713(C) (Supp. 2004), which require only that CWS report notices of violations of DHEC rules “which **affect the service provided** to its customers.” Had the Commission and legislature intended to include a requirement that all notices of DHEC violation be reported to the Commission, and not just those “which affect the service provided to . . .

¹²Measured against the Company’s total allowed test year operating expenses of \$5,276,547 [Order No. 2005-328 at 23], this is less than four-tenths of one percent (0.004%) and, thus, immaterial. *Cf. Porter, supra*. And, by contrast, in the recently concluded case involving Midlands Utility – a much smaller utility with far less customers than CWS – the Commission recognized that DHEC fines totaling \$30,451 had been incurred during the test year, but imposed no additional reporting requirements on the utility as a result. See Order No. 2005-168, Docket No. 2004-297-S. Thus, this portion of Order No. 2005-328 is contrary to Commission precedent. See *330 Concord Street Neighborhood Ass’n, supra*.

customers,” they could have said so. But they did not. Regulations authorized by the legislature have the force and effect of law. *Glover by Cauthen v. Suitt Construction Company*, 318 S.C. 465, 458 S.E.2d 535 (1995). As is the case with statutory construction, the words of a regulation must be given their plain meaning. *Converse Power Corp. V. S.C. Dep’t of Health and Environmental Control*, 350 S.C. 39, 564 S.E.2d 341 (Ct. App. 2002). Even in the absence of the plain meaning rule, the reading Order No. 2005-328 gives to subsection C of these regulations is improper. A single provision of a regulation cannot be read in isolation of the remainder of the regulation. *Cf. State v. Belviso*, 360 S.C. 112, 600 S.E.2d 68 (Ct. App. 2004). To the contrary, regulations, like statutes, must be read as a whole, considering and giving affect to all parts thereof. *Cf. Gilfillin v. Gilfillin*, 344 S.C. 407, 544 S.E.2d 829 (2001). Read as a whole, these regulations clearly pertain to violations of regulatory standards which affect the continuous provision of service to customers –i.e., those violations which result in an interruption of service. In addition to the language employed elsewhere in the regulations,¹³ subsection C itself makes abundantly clear that only violations affecting continuous provision of service are at issue since there is placed upon the utility an obligation to temporally address and correct the violation. The only reason that a temporal response to a violation would be necessary is to alleviate the interruption of service. On the other hand, there can be any number of DHEC violations which cannot be temporally addressed.

¹³See, e.g., subsections A and B referencing “interruptions of service.”

- (d) There is absolutely no evidence of record to support the conclusion of Order No. 2005-328 that all DHEC violations affect the service provided to the Company's customers. As Company witness Haas noted in his rebuttal testimony challenging the original contention of ORS that the Company had not complied with these regulations, DHEC violations may occur which have no affect on service to customers. [Tr. p. 479, ll. 22-24.] This testimony was unchallenged by any party of record as no surrebuttal testimony addressing this point was filed. Moreover, in its proposed order submitted to the Commission in this docket, ORS did not assert that the Company's interpretation of RR. 103-513(C) and 103-713(C) was erroneous.
- (e) This portion of Order No. 2005-328 violates the Company's due process rights since it requires the Company to take certain actions even though there has been no final determination that DHEC regulations have been violated. See S.C. Const. art. I, § 22.
- (f) This portion of Order No. 2005-328 violates S.C. Code Ann. § 1-23-110 since it effects an amendment to R. 103-712.4.A.13 and R. 103-713(C) – and only as to a single utility – without observance of the requirements for rulemaking, including that of notice to those sought to be bound. See also S.C. Const. art. I, § 22.¹⁴

¹⁴If, as Order No. 2005-328 concludes, "DHEC violations, by their very nature, affect the service provided to Carolina Water Service customers," then every such violation by every other jurisdictional utility must also affect the service provided to their customers. Accordingly, unless CWS is not be singled out in a manner implicating equal protection, the Commission must necessarily hold every utility to the same standard. This the Commission can only accomplish through a rulemaking proceeding in accordance with the law.

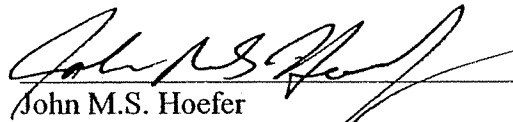
CWS therefore submits that the requirements of paragraphs 1, 2 and 3 at page 54 of Order No. 2005-328 are not supported by, or are erroneous in light of, the substantial evidence of record, are arbitrary and capricious, and exceed the Commission's authority under its regulations and law, and violate the Company's constitutional rights.

9. In the event that this petition for rehearing or reconsideration is denied, CWS requests that the Commission approve a bond pursuant to S.C. Code Ann. § 58-5-240(D) (Supp. 2004) in the amount of \$326,808.00. This figure represents **twice** the annual difference between the sewer revenue which would be generated by the sewer rates approved in Order No. 2005-328 and the sewer revenue the Company would receive if the Commission had authorized rates generating \$1,077,178 in additional revenue based upon application of the adopted customer growth component to both revenues and expenses. See ¶ 5, *supra*. Attached hereto as Petition Exhibit 3 is the Company's calculation in that regard. Also attached hereto as Petition Exhibit 4 is a proposed bond form to be executed by a surety company authorized to do business in this state. CWS submits that, based upon the additional amount of sewer revenues which would be generated over and above those authorized in Order No. 2005-328 over a period of two years,¹⁵ a surety bond in the amount proposed is sufficient. CWS therefore requests that the Commission approve the attached bond form to be posted during any appeal by CWS in the event that the requested revisions to the sewer rate schedule are not granted upon this petition for rehearing or reconsideration. CWS further requests that the Commission allow CWS to make any refunds required (if the rates put into effect are finally determined to be excessive) by crediting existing customers' bills.

¹⁵CWS assumes that any further proceedings regarding this matter would take two years to complete.

WHEREFORE, having set forth the proper grounds, CWS requests that the Commission issue an order: (a) granting this petition for rehearing or reconsideration; (b) modifying the findings, conclusions, and decisions in Order No. 2005-328 in accordance herewith; (c) in the event that rehearing or reconsideration are not granted, approving the attached bond form to be conditioned upon the refund, by way of credits on existing customers' bills, if the rates put into effect are finally determined to be excessive; and (d) granting CWS such other and further relief as is just and proper.

Respectfully submitted,



John M.S. Hoefer

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Attorneys for Carolina Water Service, Inc.

Columbia, South Carolina
This 14th day of July, 2005

Carolina Water Service, Inc.
Income Statement - Combined Operations
Test Year Ended June 30, 2004

Exhibit No.1
Schedule No. 1-1

	As Adjusted CWS & ORS	Proposed Increase	After Proposed Increase
Operating Revenues			
Water Revenues	\$ 1,836,269	\$ 47,185	\$ 1,883,454
Sewer Revenues	3,774,328	1,029,993	4,804,321
Misc. Revenues	106,827	-	106,827
Uncollectible Accounts	(42,869)	(8,344)	(51,213)
Total Operating Revenues	<u>5,674,555</u>	<u>1,068,834</u>	<u>6,743,389</u>
 Total Operation & Maintenance Expenses	 3,206,723	 -	 3,206,723
Total General Expenses	964,142	-	964,142
Depreciation & Amortization	352,242	-	352,242
Extraordinary Retirement	29,924	-	29,924
Taxes Other Than Income	735,761	11,562	747,323
Income Taxes	-	299,185	299,185
Amortization of ITC	(8,852)	-	(8,852)
Interest on Customer Deposits	(3,311)	-	(3,311)
Total Operating Expenses	<u>5,276,629</u>	<u>310,747</u>	<u>5,587,376</u>
 Total Operating Income	 397,926	 758,088	 1,156,014
 AFUDC	 -	 -	 -
Customer Growth	7,184	34,476	41,660
 Net Income for Return	 405,110	 792,564	 1,197,674
 Original Cost Rate Base	 14,940,867		 14,940,867
 Return on Rate Base			 8.02%
 Interest Expense			 644,242

Carolina Water Service, Inc.
Income Statement - Water Operations
Test Year Ended June 30, 2004

Exhibit No.1
Schedule No. 1-2

	As Adjusted CWS & ORS	Proposed Increase	After Proposed Increase
Operating Revenues			
Water Revenues	\$ 1,836,269	\$ 47,185	\$ 1,883,454
Sewer Revenues	-		-
Misc. Revenues	31,199		31,199
Uncollectible Accounts	(13,705)	(355)	(14,060)
Total Operating Revenues	<u>1,853,763</u>	<u>46,830</u>	<u>1,900,593</u>
 Total Operation & Maintenance Expenses	716,781	-	716,781
Total General Expenses	356,348	-	356,348
Depreciation & Amortization	118,639		118,639
Extraordinary Retirement	29,924		29,924
Taxes Other Than Income	250,636	506	251,142
Income Taxes	-	95,684	95,684
Amortization of ITC	(2,631)		(2,631)
Interest on Customer Deposits	(1,224)		(1,224)
Total Operating Expenses	<u>1,468,472</u>	<u>96,190</u>	<u>1,564,663</u>
 Total Operating Income	385,291	(49,360)	335,931
 AFUDC	-		-
Customer Growth	7,012	14,269	21,281
 Net Income for Return	392,303	(35,091)	357,212
 Original Cost Rate Base	3,999,548		3,999,548
 Return on Rate Base			8.93%
 Interest Expense			172,458

Carolina Water Service, Inc.
Income Statement - Sewer Operations
Test Year Ended June 30, 2004

Exhibit No.1
Schedule No. 1-3

	As Adjusted CWS & ORS	Proposed Increase	After Proposed Increase
Operating Revenues			
Water Revenues	\$ -		\$ -
Sewer Revenues	3,774,328	1,029,993	4,804,321
Misc. Revenues	75,628		75,628
Uncollectible Accounts	(29,164)	(7,989)	(37,153)
Total Operating Revenues	<u>3,820,792</u>	<u>1,022,004</u>	<u>4,842,796</u>
Total Operation & Maintenance Expenses	2,489,942	-	2,489,942
Total General Expenses	607,794	-	607,794
Depreciation & Amortization	233,603		233,603
Extraordinary Retirement	-		-
Taxes Other Than Income	(4) 485,125	11,055	496,180
Income Taxes	-	203,501	203,501
Amortization of ITC	(6,221)		(6,221)
Interest on Customer Deposits	(2,087)		(2,087)
Total Operating Expenses	<u>3,808,157</u>	<u>214,556</u>	<u>4,022,713</u>
Total Operating Income	12,635	807,448	820,083
AFUDC	-		-
Customer Growth	172	20,207	20,379
Net Income for Return	12,807	827,655	840,462
Original Cost Rate Base	10,941,319		10,941,319
Return on Rate Base			7.68%
Interest Expense			471,784

Carolina Water Service of South Carolina
PROPOSED REVENUES

Exhibit No.1
Schedule No. 1-4
Page 1 of 2

WATER

Bill code	Gallons	Usage Charge	Units	Base Facility Charge	Revenues
All Subs:					
30001	5/8" Res Water	3.32	16,598	10.25	\$ 501,297
30002	5/8" Res Water Dist	1.90	31,772	10.25	684,276
30003	5/8" Res. Under Const.	3.32	12	10.25	315
30006	5/8" Res Water (per unit)	1.90	2,496	10.25	50,867
30008	5/8" Coml Water Dist	1.90	285	10.25	7,849
30009	5/8" Coml Water	3.32	117	10.25	3,327
30010	1" Coml Water	3.32	12	25.62	357
30011	1" Coml Water Dist	1.90	27	25.62	3,544
30016	2" Coml Water Dist	1.90	71	82.00	17,582
30017	3" Coml Water Dist	1.90	12	164.00	5,190
46001	5/8" Res Water	1.90	18,778	10.25	385,070
46005	2" Res Water	1.90	7,680	10.25	111,988
46006	5/8" Res Flat Rate	1.90	12	10.25	123
46009	5/8" Coml Water	1.90	668	10.25	19,640
46010	1" Coml Water	1.90	180	25.62	11,180
46012	1.5" Coml Water	1.90	125	51.25	17,173
46013	2" Coml Water	1.90	237	82.00	47,679
46014	3" Coml Water	1.90	48	164.00	15,997
Total			79,131		\$ 1,883,454

Carolina Water Service of South Carolina
PROPOSED REVENUES

Exhibit No.1
 Schedule No. 1-4
 Page 2 of 2

SEWER

Bill code

All Subs:

	Units	Rate	Revenues
29521 Residential Sewer	1,249	37.76	\$ 47,153
30021 5/8" Res Sewer	47,326	37.76	1,787,012
30023 2" Commercial-per SFE	2,064	37.76	77,926
30024 5/8" Res Sewer Collection	6,177	24.33	150,265
30029 VanArsdale Subdivision	4,992	15.00	74,880
30041 5/8" Res Sewer	48,458	37.76	1,829,784
30042 5/8" Mobile Home Sewer	1,235	26.99	33,322
30043 5/8" Coml Sewer-per SFE	1,070	37.76	40,403
46021 5/8" Res Sewer	25,300	24.33	615,476
46023 5/8" Coml Sewer Collection-per SFE	6,088	24.33	148,100
Total	143,957		\$ 4,804,321

Carolina Water Service, Inc.
 Computation of Income Taxes
 Test Year Ended June 30, 2004

Exhibit No.1
 Schedule No. 1-5

	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
Operating Revenues After Proposed Increase	\$ 6,743,389	\$ 1,900,593	\$ 4,842,796
Operating Expenses After Proposed Increase	<u>5,297,043</u>	<u>1,471,610</u>	<u>3,825,433</u>
Net Operating Income Before Taxes	1,446,347	428,983	1,017,363
Less: Annualized Interest Expense	<u>644,242</u>	<u>172,458</u>	<u>471,784</u>
Taxable Income - State	802,105	256,525	545,580
State Income Tax @ 5%	40,105	12,826	27,279
Taxable Income - Federal	762,000	243,699	518,301
Federal Income Tax @ 34%	259,080	82,858	176,222
Total State & Federal Income Tax	299,185	95,684	203,501

Carolina Water Service, Inc.

Computation of Taxes Other Than Income [Excluding Payroll Taxes]

Test Year Ended June 30, 2004

Exhibit No.1

Schedule No. 1-6

	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
Operating Revenues - Proposed Increase	\$ 1,077,178	\$ 47,185	\$ 1,029,993
PSC & ORS Factor [.007733226]	8,330	365	7,965
Department of Revenue [.003]	<u>3,232</u>	<u>142</u>	<u>3,090</u>
Total	\$ 11,562	\$ 506	\$ 11,055

Carolina Water Service, Inc.
Customer Growth Analysis
Test Year Ended June 30, 2004

Exhibit No.1
Schedule No. 1-7

	<u>Growth Factor</u>	<u>After Proposed Increase</u>
Water	6.34%	
Net Operating Income		335,931
Growth Factor		<u>6.34%</u>
Growth Adjustment		\$ 21,281
Sewer	2.49%	
Net Operating Income		820,083
Growth Factor		<u>2.49%</u>
Growth Adjustment		\$ 20,379

Carolina Water Service, Inc.
Income Statement - Combined Operations
Test Year Ended June 30, 2004

Exhibit No. 2
Schedule No. 2-1

	As Adjusted CWS & ORS	Proposed Increase	After Proposed Increase
Operating Revenues			
Water Revenues	\$ 1,836,269	\$ 47,185	\$ 1,883,454
Sewer Revenues	3,774,328	1,069,937	4,844,265
Misc. Revenues	106,827	-	106,827
Uncollectible Accounts	(42,869)	(8,653)	(51,522)
Total Operating Revenues	<u>5,674,555</u>	<u>1,108,469</u>	<u>6,783,024</u>
 Total Operation & Maintenance Expenses	 3,206,723	 -	 3,206,723
Total General Expenses	964,142	-	964,142
Depreciation & Amortization	352,242	-	352,242
Extraordinary Retirement	29,924	-	29,924
Taxes Other Than Income	735,761	11,990	747,751
Income Taxes	-	313,809	313,809
Amortization of ITC	(8,852)	-	(8,852)
Interest on Customer Deposits	(3,311)	-	(3,311)
Total Operating Expenses	<u>5,276,629</u>	<u>325,799</u>	<u>5,602,428</u>
 Total Operating Income	 397,926	 782,670	 1,180,595
 AFUDC	 -	 -	 -
Customer Growth	7,184	10,402	17,586
 Net Income for Return	 405,110	 793,072	 1,198,181
 Original Cost Rate Base	 14,940,867		 14,940,867
 Return on Rate Base			 8.02%
 Interest Expense			 644,242

Carolina Water Service, Inc.
Income Statement - Water Operations
Test Year Ended June 30, 2004

Exhibit No. 2
Schedule No. 2-2

	As Adjusted CWS & ORS	Proposed Increase	After Proposed Increase
Operating Revenues			
Water Revenues	\$ 1,836,269	\$ 47,185	\$ 1,883,454
Sewer Revenues	-		-
Misc. Revenues	31,199		31,199
Uncollectible Accounts	(13,705)	(355)	(14,060)
Total Operating Revenues	<u>1,853,763</u>	<u>46,830</u>	<u>1,900,593</u>
 Total Operation & Maintenance Expenses	716,781	-	716,781
Total General Expenses	356,348	-	356,348
Depreciation & Amortization	118,639		118,639
Extraordinary Retirement	29,924		29,924
Taxes Other Than Income	250,636	506	251,142
Income Taxes	-	95,684	95,684
Amortization of ITC	(2,631)		(2,631)
Interest on Customer Deposits	(1,224)		(1,224)
Total Operating Expenses	<u>1,468,472</u>	<u>96,190</u>	<u>1,564,663</u>
 Total Operating Income	385,291	(49,360)	335,931
 AFUDC	-		-
Customer Growth	7,012	(885)	6,127
 Net Income for Return	392,303	(50,246)	342,057
 Original Cost Rate Base	3,999,548		3,999,548
 Return on Rate Base			8.55%
 Interest Expense			172,458

Carolina Water Service, Inc.
Income Statement - Sewer Operations
Test Year Ended June 30, 2004

Exhibit No. 2
Schedule No. 2-3

	As Adjusted CWS & ORS	Proposed Increase	After Proposed Increase
Operating Revenues			
Water Revenues	\$ -		\$ -
Sewer Revenues	3,774,328	1,069,937	4,844,265
Misc. Revenues	75,628		75,628
Uncollectible Accounts	(29,164)	(8,298)	(37,462)
Total Operating Revenues	<u>3,820,792</u>	<u>1,061,639</u>	<u>4,882,431</u>
 Total Operation & Maintenance Expenses	 2,489,942	 -	 2,489,942
Total General Expenses	607,794	-	607,794
Depreciation & Amortization	233,603		233,603
Extraordinary Retirement	-		-
Taxes Other Than Income	485,125	11,484	496,609
Income Taxes	-	218,125	218,125
Amortization of ITC	(6,221)		(6,221)
Interest on Customer Deposits	(2,087)		(2,087)
Total Operating Expenses	<u>3,808,157</u>	<u>229,609</u>	<u>4,037,766</u>
 Total Operating Income	 12,635	 832,030	 844,665
 AFUDC	 -	 -	 -
Customer Growth	172	11,287	11,459
 Net Income for Return	 12,807	 843,317	 856,124
 Original Cost Rate Base	 10,941,319		 10,941,319
 Return on Rate Base			 7.82%
 Interest Expense			 471,784

Carolina Water Service of South Carolina
PROPOSED REVENUES

Exhibit No. 2
Schedule No. 2-4
Page 1 of 2

WATER

Bill code		Gallonsage	Usage Charge	Units	Base Facility Charge	Revenues
30001	5/8" Res Water	99,748,350	3.32	16,598	10.25	\$ 501,297
30002	5/8" Res Water Dist	188,741,828	1.90	31,772	10.25	684,276
30003	5/8" Res. Under Const.	57,710	3.32	12	10.25	315
30006	5/8" Res Water (per unit)	13,306,880	1.90	2,496	10.25	50,867
30008	5/8" Coml Water Dist	2,593,505	1.90	285	10.25	7,849
30009	5/8" Coml Water	640,980	3.32	117	10.25	3,327
30010	1" Coml Water	14,950	3.32	12	25.62	357
30011	1" Coml Water Dist	1,501,120	1.90	27	25.62	3,544
30016	2" Coml Water Dist	6,189,590	1.90	71	82.00	17,582
30017	3" Coml Water Dist	1,695,600	1.90	12	164.00	5,190
46001	5/8" Res Water	101,366,139	1.90	18,778	10.25	385,070
46005	2" Res Water	17,509,290	1.90	7,680	10.25	111,988
46006	5/8" Res Flat Rate	0	1.90	12	10.25	123
46009	5/8" Coml Water	6,733,200	1.90	668	10.25	19,640
46010	1" Coml Water	3,457,146	1.90	180	25.62	11,180
46012	1.5" Coml Water	5,666,700	1.90	125	51.25	17,173
46013	2" Coml Water	14,865,970	1.90	237	82.00	47,679
46014	3" Coml Water	4,276,500	1.90	48	164.00	15,997
Total		468,365,458		79,131		\$ 1,883,454

All Subs:

Carolina Water Service of South Carolina
 PROPOSED REVENUES

Exhibit No. 2
 Schedule No. 2-4
 Page 2 of 2

SEWER

Bill code

All Subs:

	Units	Rate	Revenues
29521 Residential Sewer	1,249	38.14	\$ 47,628
30021 5/8" Res Sewer	47,326	38.14	1,804,995
30023 2" Commercial-per SFE	2,064	38.14	78,711
30024 5/8" Res Sewer Collection	6,177	24.37	150,530
30029 VanArsdale Subdivision	4,992	15.00	74,880
30041 5/8" Res Sewer	48,458	38.14	1,848,196
30042 5/8" Mobile Home Sewer	1,235	27.21	33,595
30043 5/8" Coml Sewer-per SFE	1,070	38.14	40,810
46021 5/8" Res Sewer	25,300	24.37	616,559
46023 5/8" Coml Sewer Collection-per SFE	6,088	24.37	148,361
Total	143,957		\$ 4,844,265

Carolina Water Service, Inc.
 Computation of Income Taxes
 Test Year Ended June 30, 2004

Exhibit No. 2
 Schedule No. 2-5

	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
Operating Revenues After Proposed Increase	\$ 6,783,024	\$ 1,900,593	\$ 4,882,431
Operating Expenses After Proposed Increase	<u>5,297,472</u>	<u>1,471,610</u>	<u>3,825,862</u>
Net Operating Income Before Taxes	1,485,552	428,983	1,056,569
Less: Annualized Interest Expense	<u>644,242</u>	<u>172,458</u>	<u>471,784</u>
Taxable Income - State	841,310	256,525	584,785
State Income Tax @ 5%	42,066	12,826	29,239
Taxable Income - Federal	799,245	243,699	555,546
Federal Income Tax @ 34%	271,743	82,858	188,886
Total State & Federal Income Tax	313,809	95,684	218,125

Carolina Water Service, Inc.
Computation of Taxes Other Than Income [Excluding Payroll Taxes]
Test Year Ended June 30, 2004

Exhibit No. 2
Schedule No. 2-6

	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
Operating Revenues - Proposed Increase	\$ 1,117,122	\$ 47,185	\$ 1,069,937
PSC & ORS Factor [.007733226]	8,639	365	8,274
Department of Revenue [.003]	<u>3,351</u>	<u>142</u>	<u>3,210</u>
Total	\$ 11,990	\$ 506	\$ 11,484

Carolina Water Service, Inc.
Customer Growth Analysis
Test Year Ended June 30, 2004

Exhibit No. 2
Schedule No. 2-7

			<u>Growth Factor</u>	<u>After Proposed Increase</u>
<u>Water Operations</u>				
Number of Customers	31-Dec-03	5,733		
Number of Customers	31-Dec-04	5,946		
Average		5,840	1.82%	
Net Operating Income				335,931
Growth Factor				<u>1.82%</u>
Growth Adjustment				\$ 6,127
<u>Sewer Operations</u>				
Number of Customers	31-Dec-03	9,779		
Number of Customers	31-Dec-04	10,050		
Average		9,915	1.36%	
Net Operating Income				844,665
Growth Factor				<u>1.36%</u>
Growth Adjustment				\$ 11,459

Test Year Ended June 30, 2004

Page 1 of 2

Commission Ordered Rates Using Actual Billing Units & Gallons

SEWER

Bill code		Units	Rate	Revenues
<u>All Subs:</u>				
29521	Residential Sewer	1,249	\$ 36.46	\$ 45,530
30021	5/8" Res Sewer	47,326	36.46	1,725,489
30023	2" Commercial-per SFE	2,064	36.46	75,244
30024	5/8" Res Sewer Collection	6,177	23.47	144,968
30029	VanArsdale Subdivision	4,992	15.00	74,880
30041	5/8" Res Sewer	48,458	36.46	1,766,788
30042	5/8" Mobile Home Sewer	1,235	26.20	32,345
30043	5/8" Coml Sewer-per SFE	1,070	36.46	39,012
46021	5/8" Res Sewer	25,300	23.47	593,781
46023	5/8" Coml Sewer Collection-per SFE	6,088	23.47	142,879
Total		143,957		\$ 4,640,917

Carolina Water Service of South Carolina
Test Year Ended June 30, 2004
CWS Proposed Rates Using Actual Billing Units & Gallons

SEWER

Bill code		Units	Rate	Revenues
<u>All Subs:</u>				
29521	Residential Sewer	1,249	37.76	\$ 47,153
30021	5/8" Res Sewer	47,326	37.76	1,787,012
30023	2" Commercial-per SFE	2,064	37.76	77,926
30024	5/8" Res Sewer Collection	6,177	24.33	150,265
30029	VanArsdale Subdivision	4,992	15.00	74,880
30041	5/8" Res Sewer	48,458	37.76	1,829,784
30042	5/8" Mobile Home Sewer	1,235	26.99	33,322
30043	5/8" Coml Sewer-per SFE	1,070	37.76	40,403
46021	5/8" Res Sewer	25,300	24.33	615,476
46023	5/8" Coml Sewer Collection-per SFE	6,088	24.33	148,100
Total		<u>143,957</u>		<u>\$ 4,804,321</u>

Bond Requirement \$ 163,404

EXHIBIT 4

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2004-357-WS

IN RE:

Application of Carolina Water Service,
Inc. for adjustment of rates and
charges and modification of certain terms
and conditions for the provision of water
and sewer service.

BOND

KNOW ALL PEOPLE BY THESE PRESENTS, that Carolina Water Service, Inc. as principal and _____ Insurance Company, a corporation under the laws of the State of _____, duly authorized to transact business in the State of South Carolina as surety, are held and firmly bound unto the customers of Carolina Water Service, Inc. affected by Order No. 2005-328 of the Public Service Commission, dated June 22, 2004, and any Order denying reconsideration thereof, issued in the above-captioned proceeding, for the sum of three hundred twenty six thousand eight hundred eight and No/100s Dollars (\$326,808.00) in lawful money of the United States of America, for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Commission Orders under appeal are ultimately determined to be valid and enforceable, then,

Carolina Water Service, Inc. hereby promises to refund amounts it has collected in excess of the amounts finally determined to be correct under the appropriate rate schedules. Any such refunds shall include interest as provided by law.

SIGNED, sealed and dated this _____ day of _____, 2005.

As to Principal

Carolina Water Service, Inc.

Witness

ATTEST:

Witness

As to Surety

Insurance Company

Witness

Witness

WITNESS AS TO PRINCIPAL

STATE OF _____

_____ County.

Before me, the subscribing Notary Public, personally appeared _____
and made oath that he/she saw the within named Carolina Water Service, Inc. Company represented
by sign, seal, and deliver the within Bond, and that he/she with _____
Subscribed their names as witness thereto.

Sworn to and subscribed before
me this _____ day of _____, 2005.

(L.S.)
Notary Public

WITNESS AS TO SURETY

STATE OF _____

_____ County.

Before me, the subscribing Notary Public, personally appeared _____
and made oath that he/she saw the within named _____ Company represented
by sign, seal, and deliver the within Bond, and that he/she with _____
Subscribed their names as witness thereto.

Sworn to and subscribed before
me this _____ day of _____, 2005.

(L.S.)
Notary Public

I. RATE OF RETURN

The Company's first allegation of error in the area of rate of return is that this Commission erred in relying upon ORS witness Johnson's surrebuttal testimony, which contained "judgment" on the growth rate of 5.5%-6.5%. CWS asserts that, although the witness relied on a combination of historical data plus judgment, this judgment was not based on any evidence in the record, and that it was therefore error for the Commission to rely on this testimony to support a conclusion contained in the Order. We disagree. The data, and therefore, the evidence upon which Dr. Johnson relied to determine his growth rate is laid out in detail in Dr. Johnson's direct testimony before this Commission at Tr., pp. 251-252. To quote in part, "The growth rate I used in my DCF analysis encompasses the rapid 6.0% growth in dividends which was experienced from 2001 to 2003, as well as the 5.5% growth in earnings which was experienced during 1997-2001.....The growth rate range of 5.5% to 6.5% I used in my DCF analysis is generally consistent with the average growth in book value which was experienced by these 10 water companies from 1995 through 2003." Tr., p. 251, l. 21-p. 252, l. 4. Dr. Johnson goes on to explain why the growth in book value is significant in this context. Dr. Johnson further states, "The 5.5% to 6.5% growth range I used in my DCF analysis falls between the 9.7% book value growth rate experienced during 2001-2003 and the 1.4% growth rate experienced during 2000-2002. It is somewhat lower than the average rate of growth in book value during 1997-2003 of 7.1%, but it encompasses the corresponding growth rates during 1997-2002 (6.3%) and 1996-2002 (6.2%)." Tr., p. 252, ll. 10-15. Thus, Dr. Johnson fully explicated a basis for his judgment in arriving at the growth rate range of 5.5%-6.5%.

An expert witness may base his opinion on information, whether or not admissible, made available to him before the hearing if the information is of the type reasonably relied upon in the field to make opinions. SCRE 703; Hundley v. Rite Aid of South Carolina, Inc., 339 S.C. 285, 529 S.E. 2d 45 (S.C. App. 2000). According to SCRE 703, this information need not even be admissible in evidence. Clearly, Dr. Johnson relied on information of the type reasonably relied upon in his field to make opinions and made an informed judgment as to the growth rate of 5.5%-6.5%. Accordingly, the CWS allegation that Dr. Johnson's exercise of judgment is without evidentiary basis is without merit and must be rejected.

The second allegation of error in the rate of return area is that "no witness discussed the appropriateness of a 1% range on return on equity to be established and imposed within the range of returns otherwise testified to as is adopted by Order No. 2005-328." Also included in this allegation is language questioning the use of S.C. Act 16 as an example of the use of a 1% range, and language attacking the discussion of the agreed upon range for rate of return in Docket No. 2004-178-E (which CWS incorrectly denominates as a "gas case"). For the reasons stated herein, the adoption of the 1% range was appropriate, and this second allegation of error must also be rejected.

First, the discussion of the Natural Gas Rate Stabilization Act and the agreed upon range for rate of return in Docket No. 2004-178-E was to show that 1% ranges in the rate of return arena are not uncommon, and, in the case of Docket No. 2004-178-E (an electric case), a 1% range for rate of return was actually adopted by this Commission. Even though this Commission is not allowed to base its decision on past practice (See Hamm v.

South Carolina Public Service Commission, et. al., 309 S.C. 282, 422 S.E. 2d 110 (1992)), it has also been alleged by some that this Commission may not deviate from past practice without sufficiently defining its reasons for doing so. (See 330 Concord Street Neighborhood Association v. Campsen, 309 S.C. 514, 424 S.E. 2d 538 (Ct. App. 1992)). Although application of these court cases to the Commission appear to be contradictory to us, we would note that the purpose of the discussion with regard to the Order in Docket No. 2004-178-E was to show that setting a 1% range on rate of return was not an arbitrary decision on the part of this Commission, but had its roots in a decision in prior litigation.

Second, a 1% range of rate of return is perfectly acceptable, as it is based on the evidence contained in this case. ORS witness Johnson stated that the cost of equity to the typical local water utility is within a 1% range. Tr., p. 242, ll. 19-20. He also testified that, based on his comparable earnings analysis, his estimate of the cost of equity is a 1% range. Tr., p. 268, ll. 7-8. Even though we did not adopt either of the exact 1% ranges recommended by Dr. Johnson for our ultimate rate of return on equity, it is reasonable, based on Dr. Johnson's testimony, to adopt a 1% range for rate of return in this case.

Further, this Commission was not required to inform the Company that it would be using a 1% range on rate of return. No due process rights were violated in this context, since a wide range of rates of return were presented in testimony at the hearing on this matter, and these ranges were subject to cross-examination, including some in the 1% range. See discussion above. Further, this Commission sits as the trier of the facts, akin to a jury of experts. Hamm v. South Carolina Public Service Commission, et al., 294 S.C.

320, 364 S.E. 2d 455 (1988). A jury is free, as a general rule, to accept or reject in whole or in part testimony of any witness, including an expert witness. Sauers v. Poulin Brothers Homes, Inc., et al., 328 S.C. 601, 493 S.E. 2d 503 (S.C. App. 1997). In this case, as finders of fact, it was our belief that a particular 1% range on rate of return (9.1%-10.1%) captured the most reasonable rate of return for the Company and we reaffirm this belief in this Order. This allegation of error by the Company is rejected.

The third allegation of error by CWS in the rate of return area is that we erred in concluding that 9.1% was the appropriate rate of return on equity for the express purpose of minimizing the impact of the rate adjustment on customers. CWS addressed three specific points in this area. According to the Company, there was no discussion or analysis of the reasons that the Company's customers are entitled to have the impact of a rate increase minimized by setting the allowable return on equity at the lowest end of the range adopted. Second, CWS alleges that there was no explanation provided of how the determination was made that "effectively eliminating 90% of the adopted range of returns 'allows [sic] the Company to realize a reasonable rate of return and maintain its financial viability.'" Petition at 7-8, quoting the Order at 19. Third, according to CWS, minimizing the impact on customers is inconsistent with the Commission's charge under law to balance the interests of utilities and ratepayers. We discern no error.

Order No. 2005-328 specifically states the intention of this Commission to balance the interests of utilities and ratepayers. We stated as follows: "We are setting rates at the low end of the range in order to minimize the impact on the Company's customers, while allowing the Company to realize a reasonable rate of return and

maintain its financial viability.” Order No. 2005-328 at 19. This clearly indicated an intent to balance the interests of both groups, and we reaffirm that intent. The 9.1% was clearly in Dr. Johnson’s range of rates of return after the subtraction of flotation costs. The cost of equity approved by this Commission must be supported by the expert testimony. See Hamm v. South Carolina Public Service Commission, 309 S.C. 282, 422 S.E. 2d 110 (1992). This Commission may come to any reasonable conclusion that is supported by the evidence, and, again, the 9.1% is within the range of returns found in the evidence of this case, once flotation costs are subtracted.

Further, we would note that the 9.1% rate of return was only used to set the rates in this case. Under our holding in Order No. 2005-328, this Commission found that a return-on-equity range of 9.1% to 10.1% was appropriate for CWS. Order No. 2005-328 at 18. Accordingly, CWS has the right, under that order, to earn up to a 10.1% return on equity without penalty from this Commission. Thus, we are not eliminating 90% of the adopted range of returns. We believe that this addresses the rights of the utility under a consumer-utility balancing methodology. The consumer benefit, in our judgment, comes from setting the rates at the other end of the range supported by the evidence, i.e. 9.1%. Therefore, both the rights of the consumer and the rights of the utility were balanced and addressed in Order No. 2005-328. This allegation of error by the Company is misplaced.

In addition, with regard to the rate of return issue, CWS states in footnote 2 on page 2 of its Petition that it appeared to CWS that the range intended to be stated in Order No. 2005-328 at 16 is actually 9.1% to 10.4% after subtraction of the .4% flotation adjustment proposed by Dr. Johnson, instead of the stated 9.1% to 10.7%, since the

witness proposed a range of 9.5% to 10.8% for his discounted cash flow (DCF) analysis. In making this observation, CWS erroneously limited itself to Dr. Johnson's DCF analysis. Our intent was to indicate a range of rates of return encompassing both his DCF and his comparable earnings approach ranges, and not limit ourselves to his DCF approach. Combining both approaches yields a combined range of 9.5% to 11.1%. This encompasses a low end of Dr. Johnson's DCF range of 9.5% and high end of 11.1% under the comparable earnings approach. Tr., p. 254, ll. 12-13. If the 0.4% flotation cost amount is then subtracted from both the low and the high figures, a range of 9.1% to 10.7% results, as shown in Order No. 2005-328 at 16. Therefore, footnote 2 on page 2 of the CWS Petition is erroneous.

II. CUSTOMER GROWTH

The Company alleges that this Commission determines rates in an erroneous, arbitrary, and capricious manner because the sewer rates proposed by it were rejected. The gravamen of this statement is that, because Order No. 2005-328 (at p. 35) rejects the ORS customer growth adjustment of \$23,825, a lower monthly sewer service charge results (and a higher return on rate base) than was proposed by the Company and agreed to by ORS. CWS then elaborates on why this rejection was allegedly erroneous.

First, CWS alleges that rejection of the ORS customer growth adjustment is contrary to the Commission's established practice of requiring that customer growth rates be applied to both revenue and expenses. According to the Company, the method utilized by the Commission "saddles" the Company with the liability of customer growth on the revenue side, but denies it with the corresponding benefits to the Company on the

expense side, since it applies only to revenues. The Company asserts that this Commission has routinely rejected a one-sided adjustment for customer growth. This allegation of error is without merit. We would note that both the Company and ORS agreed on record in this case to a methodology that contained two ways to determine customer growth. Order No. 2005-328 at 34. The Commission found that, on the one hand, CWS included a customer growth component in its calculation of water revenue to be produced under proposed rates. CWS included a growth factor of 6.34% which was applied to billing units and usage (gallons) in calculating water revenue to be produced under proposed rates. CWS also included a growth factor of 2.49% which was applied to billing units in calculating sewer revenue to be produced under proposed rates. Id. At the hearing, CWS agreed to the ORS report which included growth in revenue and also a growth calculation using net operating income. We held in Order No. 2005-328 that we only needed one customer growth adjustment, not two, so we picked the customer growth in revenue adjustment as proposed by the parties, and rejected the other one. Clearly, we have the right to accept one of two possible adjustments proposed to us in the record, and, in this case, by agreement of the parties. Further, we would note that either the Company or ORS could have proposed expense adjustments to the method, but neither chose to do so. Therefore, we discern no error.

Second, CWS asserts that the customer growth component of its revenue calculation was not proposed as a customer growth adjustment for ratemaking purposes, and, thus, there is no evidence to support it. This particular assertion of error is without merit. Again, both the Company and ORS agreed to a methodology containing two

methods for measurement of customer growth, including the one we adopted. Accordingly, we disagree with the Company's assertion and reject it.

Third, the Company states that by adopting a customer growth adjustment applying only to revenue, Order No. 2005-328 overstates the additional annual revenue required to achieve a return on rate base of 8.02%, and understates the monthly sewer service rate required to achieve the proper additional revenue to which the Company is entitled. Again, we would note that the Company and ORS agreed on a methodology that contained alternate ways to address customer growth. If the Company had some difficulty with one of the methods, it had a right to make its views known prior to the time of agreeing with the revised ORS audit report, and to act accordingly. However, in the Parties' stipulation, the Company saw fit to agree to the revised ORS audit report which included Customer Growth by two different methods. Therefore, the Commission had the right to act as it did in this case and adopt one of the proposed methods. The Company may not criticize and disclaim after the fact a methodology that it proposed. This assertion of error is therefore rejected.

III. CUSTOMER SERVICE, WATER QUALITY, AND COMPLIANCE WITH DHEC REGULATIONS

The Company asserts that, with regard to customer service, water quality, and compliance with DHEC regulations, the Commission's findings are erroneous in light of the substantial evidence of record and that the measures imposed are contrary to or in excess of law and violate the Company's due process rights. CWS objects to conclusions being made and measures applied to the Company, based upon the neighborhood area nighttime public hearing testimony of approximately three-tenths of one percent (.3%) of

the Company's total customer base. In addition, the Company states that, in view of the size of the Company's customer base, it submits that the level of customer testimony complaining about service is immaterial, and that the customers that testified did so not only about customer service issues, but about rate issues. Further, CWS states that the majority of customers that testified were from the River Hills area, but that there is no evidence in the record, based upon inspection by the Office of Regulatory Staff, that a customer service or quality of service issue exists in that service area. According to CWS, no complaints have been filed with the Commission. The Company further asserts that, in the Company's words, the "anecdotal" evidence from customer public hearing testimony is not sufficient to permit a reasonable conclusion with respect to the Company's overall quality of service and customer service. We reaffirm our findings with regard to customer service, water quality, and compliance with DHEC regulations.

First, we would note that none of our findings with regard to these three areas directly affected the rates granted to the Company, which were based strictly on adjustments to revenues and expenses, plus an applicable operating margin. We did, however, see a need for the Company to implement various measures to ensure proper customer service, water quality, and proper compliance with DHEC regulations, after listening to customer testimony. Though a small number of customers may have testified as compared to the total number of customers of the Company, we believe that this testimony constituted sufficient evidence upon which to base our conclusions, considering what we heard in each of our four evening hearings on this matter. Further, we would note that representatives of the Company were present for each of the

neighborhood area hearings in question, and were afforded the opportunity to ask questions of all witnesses. No due process violations occurred. This Commission also had the legal right to institute new measures. First, S.C. Code Ann. Section 58-5-210 (1976) vests this Commission with power and jurisdiction to fix just and reasonable standards, practices, and measurements of service to be followed by public utilities. Further, 26 S.C. Code Ann Regs. 103-500 (B) and 103-700 (B) (1976) state that the Commission can require any other or additional service, equipment, facility, or standard, either upon complaint, upon the application of any utility or upon its own motion.

This is precisely what we have done in the present scenario. Pursuant to various complaints within the application proceedings, and after due hearing, this Commission has established additional reporting requirements and has asked for the Office of Regulatory Staff to establish certain standards and further investigate the Company's facilities. This Commission is well within its legal rights as outlined by statute and regulations to institute the measures that we did in Order No. 2005-328, as will be further explained in more detail below.

CWS argues that the Commission may not properly rely upon "anecdotal" evidence cited in Order No. 2005-328, as it is not such as would permit a reasonable person to form a conclusion with respect to the Company's overall quality of service and customer service. Again, we would note that we heard testimony from a number of customers during the course of four night hearings, and much of this testimony related to questionable customer service. Further, the use of "anecdotal" evidence may be permissible in formation of a tribunal's conclusions. See Florida Bar v. Went For It, Inc.,

518 U.S. 618, 115 S.Ct. 2371, 132 L.Ed. 2d 541 (1995), in which the United States Supreme Court accepted the “anecdotal record” mustered by the Florida Bar and held that the Bar satisfied the second prong of the test set out in Central Hudson Gas & Elec. Corp. v. Public Serv. Comm’n of N.Y., 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). In addition, the Fourth Circuit United States Court of Appeals considered anecdotal evidence when considering whether a trademark had been infringed. See Sara Lee Corporation v. Kayser-Roth Corporation, 81 F.3d 455 (1996). Accordingly, the use of anecdotal evidence may be a permissible basis upon which to form a conclusion. We believe that the number of customers presenting customer service problems supports our use of this evidence to establish remedial measures.

A. Customer Service

In addition, the Company alleges that the use of Seabrook Island Property Owners Ass’n v. South Carolina Public Service Commission, 303 S.C.493, 401 S.E. 2d 672 (1991) to support the proposition in Order No. 2005-328 that “the Commission has always considered **customer service** and quality of service to be components of rate cases” is improper, because the case does not contain the words **customer service** (emphasis added). Clearly, the case does make reference to “quality of service.” The exact passage referred to in the case reads as follows: “It is incumbent upon the PSC to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also distributes fairly the revenue requirements, considering the price at which the company’s service is rendered and **the quality of that service** (emphasis added).” 401 S.E. 2d at 675. Although we agree that

the words **customer service** do not appear in that passage, we believe that **quality of service** must implicitly include **customer service**. There is no question that customer service has to be a major component of the quality of service provided by a Company. We do not agree that Patton v. Public Service Commission, 280 S.C. 288, 312 S.E. 2d 257 (1984) fully explicates the quality of service concept. Accordingly, we believe that the Seabrook Island Property Owners case is supportive of our statement in Order No. 2005-328 when we discuss both customer service and quality of service. This allegation of error is without merit.

Further, the Company takes issue with the Order's conclusion that CWS did not have a systematic approach to reviewing complaints and outcomes, when the Company believes that the evidence showed that CWS maintains customer complaint records on a computer database with various parameters, and the ORS concluded that this complied with Commission regulations. The Order concluded that there were no periodic reports of customer complaints. Based upon these conclusions, the Commission directed CWS to make periodic reports and provide them to ORS for review. CWS states that the only evidence of record in the case is that the Company meets all of the Commission's regulations pertaining to quality (adequacy) of service and customer relations, and that the Commission has not had a single customer complaint since the last rate case. CWS alleges that there is no requirement that the Company capture complaint information in a periodic manner. According to the Company, the directives in the Order amend existing regulations and contravene the Administrative Procedures Act, and certain other

directives are in excess of the Commission's statutory authority and exceed the requirements of existing regulations. We disagree with all of these assertions.

First, we would state that the Company takes a very narrow view of this Commission's powers. Again, we point to S.C. Code Ann. Section 58-5-210 (1976) and 26 S.C. Code Ann. Regs. 103-500 (B) and 103-700 (B) (1976) as giving this Commission full authority to fix just and reasonable standards and additional practices. Further, we would note that Company witness Haas testified that no periodic reports of customer complaints were generated by the Company, which would allow the company to be aware of the volume of its customer complaints. [Tr., pp. 367-369.] Clearly, the testimony of the Company's own witness supports this Commission's conclusion that CWS did not have a systematic approach to reviewing complaints and outcomes, and there were no periodic reports of customer complaints. This allegation of error is without merit.

B. Water Quality

CWS complains that the portion of Order No. 2005-328 that discussed allegations of poor water quality, concluded that there was no testing data in the record which would allow the Commission to make findings regarding the odor, taste, or turbidity of the Company's water in connection with this rate hearing, and ordered ORS to develop tests in compliance with 26 S.C. Code Ann. 103-770 (1976) was unsupported or is erroneous in view of the substantial evidence of record and is in excess of the Commission's authority under the law and Commission regulations. The Company then raises four independent grounds for its conclusion. We disagree with the main conclusion and with the grounds stated for reasons that will be elucidated below.

First, CWS states that no more than thirteen of the Company's 5,800 water customers testified on this matter, and, therefore, that no conclusion as to the overall quality of water supplied could be drawn from this testimony. CWS misconstrues the intent of the Commission in this portion of the Order. This Commission drew no conclusion as to the overall quality of the water. See Order No. 2005-328 at 52-53. This Commission merely stated that there were a number of complaints about the poor quality of the water, but that there was no testing data in the record which would allow the Commission to make findings regarding the odor, taste, or turbidity of the Company's water. This Commission went on to state that the complaints received were a cause of concern and that tests should be developed for these parameters in connection with the appropriate statutes and regulations, and that tests should then be conducted. This was a legitimate conclusion that could be reached under 26 S.C. Code Ann. Regs. 103-700(B). Therefore, the first ground for the Company's conclusion is erroneous, since no conclusion as to the overall quality of the water was reached.

Second, the Company states that the fact that no testing data is in the record with respect to odor, taste, and turbidity of the water supplied by CWS is irrelevant to the issues properly before the Commission. Further, CWS alleges that there is no requirement that CWS supply water testing data with its application, and that the Department of Health and Environmental Control (DHEC) is the state agency responsible for water testing, not the ORS. DHEC provided no evidence as to deficient water quality in the case. Again, the allegation has no merit. First, this Commission certainly did not require CWS to file water testing data with its application. There is no Commission rule that

requires this. However, when the Company's water quality is challenged as it was in this proceeding, this Commission may certainly inquire under the statutory and regulatory authority afforded it under law. Whereas there is no question that DHEC is responsible for certain health aspects of the water supply, this does not preclude ORS from testing the aesthetic quality of the water. Further, we would cite S.C. Code Ann. Section 58-4-50 (6)(Supp. 2004), which states that ORS shall, upon request by the commission, make studies and recommendations to the commission with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions of the title. Clearly, 26 S.C. Code Ann. Regs. 103-770 (1976), entitled "Quality of Service," states that each utility shall provide water that is potable, and insofar as practicable, free from objectionable odor, taste, color and turbidity. We were well within our rights to request that ORS develop tests, based on statutory and regulatory authority. We would note that ORS already has certain testing criteria on its report sheets, like "clarity" and "odor," although ORS did not test for clarity in this case. We believe that aesthetics are important with regard to quality of service matters, as evidenced by 26 Code Ann. Regs. 103-770 (1976), and that we properly directed ORS to aid us in the determination of such aesthetics with regard to the water provided by Carolina Water Service.

In connection with the consideration of Regulation 103-770, CWS states that the regulation imposes only one requirement, which is to provide potable water, and there is no evidence that CWS' water is not potable. The Company implies that the remainder of the regulation concerning objectionable odor, taste or color may only be considered where practicable, and there is no evidence in the record in this area. CWS seems to

believe that the words “where practicable” renders the odor, taste and color portion of the regulation as unenforceable or moot, and that the only matter to be considered is potability. This is a misreading of the regulation. Clearly, the intent of the Legislature is for CWS to provide water that is free from objectionable odor, taste, and color and turbidity “where practicable.”¹ This is a regulatory burden and responsibility placed upon CWS. CWS’ argument regarding an alleged absence of evidence of practicability impermissibly attempts to shift that burden. In any event, the regulation certainly does not prevent the Commission from delving into these areas. In fact, that is exactly what the Commission is attempting to do with its mandate to ORS to develop and conduct tests in these areas.

Next, the Company states in its Petition that it is unaware of any statutory authority whereby ORS may conduct the tests on water directed by the Commission. This statement is erroneous. S.C. Code Ann. Section 58-5-210 gives the Commission broad authority to set standards and measurements of service for public utilities. Again, S.C. Code Ann. Section 58-4-50(6)(Supp. 2004) states that, upon request by the Commission, ORS is to make studies for the Commission with respect to service of any public utility. We believe that the statutory authority for our order is sound. Further, we do not think that DHEC’s statutory responsibilities affect the authority as stated above, and that the statutes cited constitute separate authority as they specifically relate to circumstances such as those in the present case.

¹ The American Heritage Dictionary of the English Language, Fourth Edition, 2000, defines *practicable* as: “Capable of being effected, done, or put into practice; feasible.”

Obviously, because of the reasoning as stated above, we disagree with the Company's conclusory paragraph in this section (Petition at 20), which alleges that Paragraphs 1 and 2 at pp. 52-53 of Order No. 2005-328 are not supported by, or are erroneous in light of the substantial evidence of record, and exceed the Commission's authority under law. The entire allegation is without merit. Simply put, a water rate case must involve how much people pay for their water, and the quality of water and service provided for the price.

C. DHEC Violations

The Company notes that the Commission, in Order No. 2005-328, places stringent reporting requirements on the Company with regard to DHEC violations. According to CWS, this is unsupported by, or is erroneous in view of, the substantial evidence of record, is arbitrary and capricious, is violative of the South Carolina Constitution, and is in excess of the Commission's authority under law and its own regulations. We disagree.

Order No. 2005-328 finds that CWS was fined by DHEC for violations of that agency's regulations during the test year, but that "there is no record before the Commission explaining the specific nature of these violations or the amount of fines." Order No. 2005-328 at 53. The Order then concludes that DHEC violations "by their very nature, affect the services provided to Carolina Water Service's customers." Id. at 53-54. This Commission then created a reporting system for the Company of such violations.

The Company first alleges that the fact that none of the DHEC fines were claimed for ratemaking purposes makes the conclusions of the Commission erroneous in light of the substantial evidence of record. The fact that none of the DHEC fines were claimed for

ratemaking purposes is irrelevant to the DHEC issue before the Commission. Clearly, Company witness Lubertoizzi revealed [Tr. at 511-512] that the Company had been fined by DHEC on several occasions, but neither he, nor any other Company witness was able to explain the specific nature of the violations or the amount of the fines. The Commission was concerned about the nature of the violations, because DHEC violations may likely be related to health concerns related to consumption of the Company's water by the Company's customers. ORS witness Dawn Hipp testified that the Company had failed to file notices of violations of PSC or DHEC rules required by 26 S.C. Code Ann. Regs.103-714(C). The Company took the position during the hearing that it was not obligated to report the violations, the nature of which were still unknown, to the Commission or to ORS because the Company had independently determined that the violations were not the kind that affected its service. By withholding information about DHEC violations, the Company seeks to substitute its own judgment for that of the Commission and the ORS. The Commission simply set up a reporting system to ensure that DHEC violations would be reported by declaring that DHEC violations, by their very nature, affect the service provided to Carolina Water Service's customers, and are thus reportable under the Regulation. Again, the fact that the fines were not being claimed for ratemaking purposed by the Company is clearly irrelevant to this Commission's stated concerns about the violations.

Second, the Company alleges that on the one hand, the Order notes that the Commission lacks information pertaining to the nature of the DHEC violations, and, on the other hand states that the nature of the violations does not matter. This is without

merit. The problem that the Commission was trying to address was lack of information. We concluded that “DHEC violations, by their very nature, affect the service provided to Carolina Water Service’s customers.” Our conclusion was not that the nature of the violations did not matter, but, to the contrary, that every DHEC violation matters, to the point where we believe that all such violations were reportable under the regulatory language. We do not believe that it should be left up to a Company to determine whether a DHEC violation affects the service provided to its customers. We believe, as we stated in Order No. 2005-328, that DHEC violations, by their very nature, affect the service provided to the Company’s customers, and we took steps to ensure that such violations were properly reported to this Commission, and, therefore, that the proper information is obtained. This ground is without merit.

Third, CWS states a belief that this portion of Order No. 2005-328 “departs from the plain language of the provisions of 26 S.C. Code Ann. RR. 103-513 (C) [sic] and 103-713 (C) (Supp. 2004) [sic]², which only require that CWS report notices of violations of DHEC rules which affect the service provided to its customers.” Petition at 21. The Company asserts that if the Commission and legislature had intended to include a requirement that all notices of DHEC violation be reported to the Commission, and not just those “which affect the service provided to...customers,” they could have said so, but they did not. The Company goes on to state its view that the regulation actually means that only violations which result in an interruption of service “affect the service provided to...customers.” The Company cites no support for this interpretation of the regulation,

² CWS was apparently referring to 26 S.C. Code Ann. Regs. 103-514 (C) and 103-714 (C) (Supp. 2004).

and we believe that it is much too narrow. We would remind CWS that this Commission is the ultimate interpreter of its own regulations, and we accordingly believe that any DHEC violation affects the Company's service to its customers. The fact of the matter is that the Company refused or was unable to give this Commission any information about the nature of its DHEC violations at all. Accordingly, we believe that the Commission has the right to demand reports on all DHEC violations so that this Commission may be properly informed about such violations. We can then decide what is significant and not significant, not the Company. The remedy is reasonable in the light of the fact that CWS was unable to furnish any information at all about DHEC violations. Lastly, what ORS did or did not assert in its proposed order in this matter is simply not binding on this Commission as to the Commission's interpretation of its orders. Further, if one interprets what this Commission did in this section as altering or amending its rules, this Commission is well within its rights under 26 S.C. Code Ann. Regs. 103-500 (B) and 103-700 (B) (1976) to alter or amend the rules and to impose an additional standard, either upon complaint or upon the Commission's own motion.

Fourth, CWS alleges that this portion of Order No. 2005-328 violates the Company's due process rights since it requires the Company to take certain actions even though there has been no final determination that DHEC regulations have been violated. This allegation of error is certainly without merit. Again, the problem being addressed by the Commission in this part of the Order was the lack of information available from the Company on DHEC violations. The only thing that this Commission ordered the Company to do was to report all DHEC violations and note corrective actions that may

have been taken, as the result of the lack of information on DHEC violations provided by the Company in this hearing. No further action was ordered. As this Commission stated in Order No. 2005-328, “this reporting system will allow ORS to make an informed decision about the Company’s compliance with DHEC rules and regulations, provide a database on this topic, and will also allow ORS to take action, if any, that it deems necessary in the future.” Order No. 2005-328 at 54. No due process rights of the Company are violated by this reporting procedure. The procedure is merely a mechanism to obtain information. It does not require any other Company activity other than mere reporting. We discern no error in imposing these reporting requirements.

Lastly, CWS states that this portion of the Order violates S.C. Code Ann. Section 1-23-110 since it affects an amendment to R. 103.712.4.A.13 and R. 103-713 (C), and only as to a single utility, without observance of the requirements for rulemaking, including notice to those sought to be bound. The Company then concludes in a rather broad statement that the requirements of paragraphs 1, 2, and 3 at page 54 of Order No. 2005-328 are not supported by, or are erroneous in light of, the substantial evidence of record, are arbitrary and capricious, and exceed the Commission’s authority under its regulations and law, and violate the Company’s constitutional rights. Such allegations are unavailing. Again, this Commission merely interpreted our own regulation by holding that DHEC violations, by their very nature, affect the service provided to Carolina Water Service’s customers and, as such, all DHEC violations are reportable. This procedure was established to address a problem particular to Carolina Water Service. Further, we cannot bind other water and wastewater utilities with our holding in this case, since other water

and wastewater utilities, with the exception of one, did not participate in the present case. Thus, the statement that our holding must apply to all water and wastewater systems in South Carolina is disingenuous. Again, however, if one interprets our actions in this matter as altering or amending the regulations in any fashion, one merely needs to reference 26 S.C. Code Ann. Regs. 103-500 (B) and 103-700 (B) to derive our ability to alter or amend a regulation or to broaden or impose an additional standard in this matter. CWS was given a chance to address this problem at the hearing on this case, so there is no Constitutional due process violation. The requirements imposed are directly linked to substantial evidence before this Commission, so our holding is not arbitrary and capricious, nor does it exceed the Commission's authority under law as per the regulations cited above. We can ultimately consider the applicability of our interpretation of the regulation to other companies, but the purpose of Order No. 2005-328 was to address deficiencies that we saw with respect to Carolina Water Service. In other words, our imposed procedural remedy was specifically imposed as the result of a deficiency in the information provided by Carolina Water Service. This allegation of error is totally without merit.

IV. CONCLUSION

Having found that each of the allegations of Carolina Water Service in its Petition is without merit, we hereby deny and dismiss the Petition.

V. APPEAL BOND

The Company states that in the event that their petition for rehearing or reconsideration is denied, it requests that this Commission approve a bond pursuant to

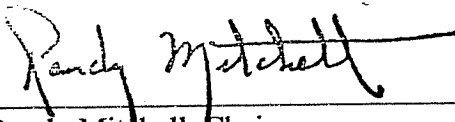
S.C. Code Ann. Section 58-5-240(D)(Supp.2004) in the amount of \$326,808.00. According to CWS, this figure represents twice the annual difference between the sewer revenue which would be generated by the sewer rates approved in Order No. 2005-328 and the sewer revenue that the Company would receive if the Commission had authorized rates generating \$1,077,178 in additional revenue based upon application of the adopted customer growth component to both revenues and expenses. The Company submitted both a calculation and a proposed bond form to be executed by a surety company authorized to do business in this state. CWS submits that, based upon the additional amount of sewer revenues which would be generated over and above those authorized in Order No. 2005-328 over a period of two years, a surety bond in the amount proposed is sufficient. CWS therefore requests that the Commission approve its proposed bond form to be posted during any appeal by CWS in the event that the requested revisions to the sewer rate schedule are not granted as per the Company's Petition. CWS further requests that the Commission allow CWS to make any refunds required (if the rates put into effect are finally determined to be excessive) by crediting existing customers' bills.

We have examined the amount of bond proposed and the bond form proposed by the Company and have determined that these should be approved. The proposed amount of the bond is reasonable and the proposed form is appropriate.

We hold in abeyance any ruling on whether or not CWS shall be allowed to make any refunds that may ultimately be required by crediting existing customers' bills.

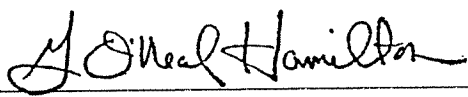
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice-Chairman

(SEAL)